

MONTANA LEGISLATIVE HISTORY

Chapter 1179 1995

Bill H 272 S _____

Original bill & history ☒ c

H. Committee on Bus & Labor

Hearing Date(s) _____ c

2/1 ☒ c

2/2 ☒ c

_____ c

Date Out

2/7 ☒ c

S. Committee on Labor & Emp. Rel.

Hearing Date(s) _____ c

3/11 ☒ c

3/14 ☒ c

3/16 ☒ c

Did this bill originate in an interim committee? _____ Yes ☒ No

Committee _____

Report _____

1/27 FISCAL NOTE PRINTED
 2/01 HEARING
 2/15 COMMITTEE REPORT—BILL PASSED AS AMENDED
 2/20 2ND READING DO PASS AS AMENDED MOTION
 FAILED

44 56

HB 270 INTRODUCED BY MCCULLOCH, ET AL.

ALLOW AN OWNER OF REAL PROPERTY TO PETITION TO BE INCLUDED IN
 A TRANSPORTATION DISTRICT

1/18 INTRODUCED
 1/18 FIRST READING
 1/18 REFERRED TO LOCAL GOVERNMENT
 2/02 HEARING
 2/15 COMMITTEE REPORT—BILL PASSED AS AMENDED
 2/17 2ND READING PASSED
 2/18 3RD READING PASSED

57 41
57 42

TRANSMITTED TO SENATE
 2/21 FIRST READING
 2/21 REFERRED TO LOCAL GOVERNMENT
 3/14 HEARING
 3/16 COMMITTEE REPORT—BILL CONCURRED
 3/18 2ND READING CONCURRED
 3/20 3RD READING CONCURRED

46 0
50 0

RETURNED TO HOUSE
 3/21 SIGNED BY SPEAKER
 3/22 SIGNED BY PRESIDENT
 3/23 TRANSMITTED TO GOVERNOR
 3/27 SIGNED BY GOVERNOR
 CHAPTER NUMBER 245
 EFFECTIVE DATE: 10/01/95

HB 271 INTRODUCED BY MCCULLOCH, ET AL.

REVISE LAW RELATING TO SUMMARY DISSOLUTION OF MARRIAGE

1/18 INTRODUCED
 1/18 FIRST READING
 1/18 REFERRED TO JUDICIARY
 2/03 HEARING
 2/11 TABLED IN COMMITTEE
 2/23 MISSED TRANSMITTAL DEADLINE
 DIED IN COMMITTEE

HB 272 INTRODUCED BY STOVALL, ET AL.

CLARIFY CERTAIN LABOR LAWS AND TAX LAWS TO INCLUDE A SERVICE
 CHARGE RECEIVED BY EMPLOYEES OF THE FOOD, BEVERAGE, AND
 LODGING INDUSTRY

1/18 INTRODUCED
 1/18 FIRST READING
 1/18 REFERRED TO BUSINESS & LABOR
 1/19 FISCAL NOTE REQUESTED
 1/23 FISCAL NOTE RECEIVED
 1/24 FISCAL NOTE PRINTED
 2/01 HEARING
 2/08 COMMITTEE REPORT—BILL PASSED AS AMENDED
 2/10 2ND READING PASSED AS AMENDED
 2/13 3RD READING PASSED

99 1
95 1

TRANSMITTED TO SENATE
 2/20 FIRST READING

2/20	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/11	HEARING		
3/17	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/25	2ND READING CONCURRED AS AMENDED	38	10
3/27	3RD READING CONCURRED	34	16
	RETURNED TO HOUSE WITH AMENDMENTS		
4/03	2ND READING AMENDMENTS CONCURRED	96	3
4/04	3RD READING AMENDMENTS CONCURRED	96	2
4/06	SIGNED BY SPEAKER		
4/07	SIGNED BY PRESIDENT		
4/10	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 479		
	EFFECTIVE DATE: 04/15/95		

HB 273 INTRODUCED BY GRINDE, ET AL.

SUBMIT TO QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE V, SECTION 6, OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE LEGISLATURE SHALL MEET IN REGULAR SESSION BIENNIALY IN EVEN-NUMBERED YEARS OR IN ODD-NUMBERED YEARS

1/18	INTRODUCED		
1/18	FIRST READING		
1/18	REFERRED TO STATE ADMINISTRATION		
1/24	HEARING		
2/02	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/06	2ND READING PASSED	85	15
2/10	3RD READING PASSED	87	13
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO STATE ADMINISTRATION		
3/07	HEARING		
3/14	COMMITTEE REPORT—BILL CONCURRED		
3/20	2ND READING CONCUR AS AMENDED MOTION		
	FAILED	15	35
	(BILL PROPOSING AMENDMENTS TO THE CONSTITUTION PROCEEDS IN THE PROCESS. AMENDMENTS PASSED ON 2ND READING WERE INCLUDED IN BILL.)		
3/21	3RD READING FAILED	14	36
	(BILL PROPOSING AMENDMENTS TO THE CONSTITUTION PROCEEDS IN THE PROCESS.)		
	RETURNED TO HOUSE WITH AMENDMENTS		
4/03	2ND READING AMENDMENTS CONCURRED	92	6
4/04	3RD READING AMENDMENTS CONCURRED	87	13
	COMBINED 3RD READING VOTE WAS 101-49; BILL RECEIVED REQUIRED 2/3 VOTE NECESSARY TO PASS.		
4/06	SIGNED BY SPEAKER		
4/07	SIGNED BY PRESIDENT		
	CHAPTER NUMBER 341		
	EFFECTIVE DATE: 01/01/98, CONTINGENT UPON VOTER APPROVAL		

HB 274 INTRODUCED BY WAGNER, ET AL.

GRANT DEPARTMENT OF STATE LANDS BROADER DISCRETION TO EXPEDITE SALES OF STATE TIMBER IN EMERGENCY SITUATIONS AND LIMITED ACCESS OPPORTUNITY SITUATIONS

1/18	INTRODUCED
1/18	FIRST READING
1/18	REFERRED TO NATURAL RESOURCES

Bob Mohr

House BILL NO. 272

INTRODUCED BY

Storall

Frankie *John* *Mohr*

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING CERTAIN LABOR LAWS AND TAX LAWS TO INCLUDE A SERVICE CHARGE RECEIVED BY EMPLOYEES OF THE FOOD, BEVERAGE, AND LODGING INDUSTRY; AMENDING SECTIONS 15-30-111, 15-30-201, 39-3-201, AND 39-3-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-3-201, MCA, is amended to read:

"39-3-201. Definitions. The following are the definitions used for the purpose of this part:

- (1) "Board" means the board of personnel appeals provided for in 2-15-1705.
- (2) "Commissioner of labor" refers to the director, commissioner, or chief of the department of labor and industry, as the department is defined by law, or any person or persons designated by him the director, commissioner, or chief for the purpose of this part.
- (3) "Department" means the department of labor and industry as provided for in 2-15-1701.
- (4) "Employ" means to permit or suffer to work.
- (5) "Employee" includes any person who works for another for hire.
- (6) "Employer" includes any individual, partnership, association, corporation, business trust, legal representative, or ~~any~~ organized group of persons acting directly or indirectly in the interest of an employer in relation to an employee but ~~shall~~ does not include the United States.

(7) (a) "Wages" includes any money due an employee from the employer or employers, whether to be paid by the hour, day, week, semimonthly, monthly, or yearly, and ~~shall include~~ includes bonus, piecework, and all tips, and gratuities of any kind, or service charges covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by employees for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging.

(b) For the purposes of this subsection (7), "service charge" means an arbitrary fixed charge added to the customer's bill by an employer in lieu of a tip. It is collected by the employer and must be distributed either directly to the employee preparing or serving the food or beverage or pursuant to a tip pool

1 agreement."

2
3 **Section 2.** Section 39-3-402, MCA, is amended to read:

4 **"39-3-402. Definitions.** As used in this part, the following definitions apply:

5 (1) "Commissioner" means the commissioner of labor and industry.

6 (2) "Employ" means to ~~suffer or~~ permit to work.

7 (3) "Employee" means an individual employed by an employer.

8 (4) "Farm or ranch" means any endeavor primarily engaged in cultivating the soil or in connection
9 with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing,
10 feeding, caring for, training, and management of livestock, bees, and poultry and fur-bearing animals and
11 wildlife.

12 (5) "Farm worker" means a person employed to do any service performed on a farm or ranch.

13 (6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of
14 industries or employment or class of employment in which employees are gainfully employed.

15 (7) (a) "Wage" means compensation due to an employee by reason of his employment, payable
16 in legal tender of the United States or check on banks convertible into cash on demand at full face value,
17 subject to an allowance as may be permitted by regulations of the commissioner under 39-3-403. The term
18 "wage" includes the reasonable cost to the employer of furnishing the employee with lodging or any other
19 facility if the lodging or other facility is customarily furnished by the employer to his employees; however,
20 the inclusion may not exceed an amount equal to 40% of the total wage paid by the employer to the
21 employee.

22 (b) The term "wage" does not include the cost to the employer of providing meals or a meal
23 allowance to the employee or the value of any tips, gratuities, or service charges covered by section
24 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received
25 by employees for services rendered by them to patrons of premises licensed to provide food, beverage, or
26 lodging received by an employee as a gratuity for service.

27 (c) For the purposes of this subsection (7), "service charge" means an arbitrary fixed charge added
28 to the customer's bill by an employer in lieu of a tip. It is collected by the employer and must be distributed
29 either directly to the employee preparing or serving the food or beverage or pursuant to a tip pool
30 agreement."

Section 3. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income ~~shall be~~ is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 ~~or~~ as that section may be labeled or amended and in addition ~~shall include~~ includes the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision ~~thereof~~;

(b) refunds received of federal income tax, to the extent the deduction of ~~such~~ the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income, under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954, that has been reduced by any federal taxes paid by the subchapter S. corporation on the income; and

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision ~~thereof~~;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips, gratuities, or service charges covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law; and

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange".

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1) shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced his business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who must are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds \$15,000, the excess reduces the

exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

Section 4. Section 15-30-201, MCA, is amended to read:

"15-30-201. Definitions. When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) "Agricultural labor" includes all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision ~~thereof~~ of the United States or Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision ~~thereof~~ of the United States or Montana. The term "~~employee~~" also includes an officer of a corporation.

(3) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person; ~~except that if the person for whom the individual performs or performed the service does not have control of the payment of the wages for the service, the term "employer" means the person having control of the payment of wages.~~

(4) "Wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for ~~his~~ the employer, including the cash value of all remuneration paid in any medium other than cash, except that the term does not include remuneration paid:

- (a) for active service as a member of the regular armed forces of the United States, as defined in 10 U.S.C. 101(33);
- (b) for agricultural labor as defined in subsection (1);
- (c) for domestic service in a private home, local college club, or local chapter of a college fraternity

1 or sorority;

2 (d) for casual labor not in the course of the employer's trade or business performed in any calendar
3 quarter by an employee unless the cash remuneration paid for the service is \$50 or more and the service
4 is performed by an individual who is regularly employed by the employer to perform the service. For
5 purposes of this subsection (4)(d), an individual is considered to be regularly employed by an employer
6 during a calendar quarter only if:

7 (i) on each of 24 days during a quarter the individual performs service not in the course of the
8 employer's trade or business for the employer for some portion of the day; and

9 (ii) the individual was regularly employed, as determined under subsection (4)(d)(i), by the
10 employer in the performance of service during the preceding calendar quarter;

11 (e) for services by a citizen or resident of the United States for a foreign government or
12 international organization;

13 (f) for services performed by ~~a duly~~ an ordained, commissioned, or licensed minister of a church
14 in the exercise of ~~his~~ the minister's ministry or by a member of a religious order in the exercise of duties
15 required by the order;

16 (g) (i) for services performed by an individual under ~~the age of 18 years of age~~ in the delivery or
17 distribution of newspapers or shopping news, not including delivery or distribution to any point for
18 subsequent delivery or distribution; or

19 (ii) for services performed by an individual in and at the time of the sale of newspapers or magazines
20 to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by
21 ~~him~~ the individual at a fixed price, ~~he~~ with compensation ~~being~~ based on the retention of the excess of the
22 price over the amount at which the newspapers or magazines are charged to ~~him~~ the individual, whether
23 or not ~~he~~ the individual is guaranteed a minimum amount of compensation for the service or is entitled to
24 be credited with the unsold newspapers or magazines turned back;

25 (h) for services not in the course of the employer's trade or business to the extent paid in any
26 medium other than cash when the payments are in the form of lodgings or meals and the services are
27 received by the employee at the request of and for the convenience of the employer;

28 (i) to or for an employee as a payment for or a contribution toward the cost of any group plan or
29 program ~~which~~ that benefits the employee, including but not limited to life insurance, hospitalization
30 insurance for the employee or dependents, and employees' club activities;

(j) for national guard and reserve training as provided in 5 U.S.C. 5517(d);

(k) as tips, gratuities, or service charges in accordance with section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(l) by an employer for dependent care assistance actually provided to or on behalf of an employee and for which a credit is allowed under 15-30-186 or 15-31-131, subject to the limitations provided in section 129(b) of the Internal Revenue Code as it read on January 1, 1989. (Subsection (4)(k) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

NEW SECTION. Section 5. **Effective date.** [This act] is effective on passage and approval.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0272, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act clarifying certain labor laws and tax laws to include a service charge received by employees of the food, beverage, and lodging industry; and providing an immediate effective date.

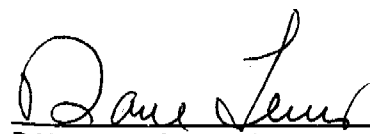
FISCAL IMPACT:

There is no impact to Department of Revenue expenditures under the intent of the proposed legislation (see technical note below). Because the proposed legislation would exempt from taxation "service charges" which are currently taxable, a negative impact on Individual Income Tax revenue would occur. However, the data necessary to calculate the magnitude of the impact is not available.

TECHNICAL NOTE:

The present language in the proposed legislation would not allow the exemption. Service charges are not covered by section 3402(k) of IRC (as the proposed legislation states), they are covered by section 3401 of the IRC. IRC section 3402(k) discusses "tips" which are subsequently treated as a wage for withholding purposes. Service charges (as defined by the proposed legislation) are not considered tips, but are wages under 3401 IRC. These IRC references would need to be changed in the proposed legislation in order to exempt "service charges" from taxation.

Unemployment Insurance rules already require the reporting of service charges.

 1-23-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

JAY STOVALL, PRIMARY SPONSOR DATE
Fiscal Note for HB0272, as introduced

HB 272

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE T. SIMON, on February 1, 1995,
at 8:00 AM.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 272, HB 344, HB 269,
Executive Action: HB 272 (postponed) HB 234

HEARING ON HB 272

Opening Statement by Sponsor:

REP. JAY STOVALL, HD 16, Yellowstone County said this bill was an
act clarifying certain labor tax laws to include a service charge

received by employees of the food, beverage, and lodging industry. He also supplied the Stovall amendments. **EXHIBIT 1.**

Proponents' Testimony:

Joy Erickson, Billings Holiday Inn said her wages had been cut in half by the Inn's decision to keep the service charge that had previously gone to the employees. She also said she understood why employers wanted to make a profit but did not understand why they need to do it by means of unfair business practices.

EXHIBIT 2

Kelly Sandoz, Billings Holiday Inn supplied a letter from Pedro R. Hernandez. **EXHIBIT 3** She also supplied three copies of service agreements. **EXHIBITS 4-6**

Kathy Malyevac, President, Montana State Council of Hotel Employees and Restaurant Employees said in most cases tipped employees earn minimum and rely on their tips to live. There is a seasonal nature to this work and is often parttime with few benefits. She then supplied three copies of labor agreements.

EXHIBITS 7-9

Lila Mae Laedeke, Sheridan Hotel said waitresses are the people who perform the services, therefore they should receive the service charge.

Connie Sullivan said she favored this bill. Customers were surprised to find the service charge was not going to the server. As a private club they assumed the wait staff was receiving this service charge that always appeared on their bill.

Lynette Russell said she was concerned about a growing policy within the food industry of assessing a service charge to checks. They, in turn, keep these charges instead of distributing them to the servers.

Daphne Kirkwood said she supported this bill.

Don Judge, AFL-CIO said under federal law, the employers are allowed to withhold up to 40% payment toward minimum wage pay and recover that amount in tips and provide that to employees. The legislature chose some time ago to exclude tips from the basic payment of the minimum wages in the state. Tips would go to the employees entirely on top of that minimum wage payment. It was a policy decision this state made some time ago. Unfortunately, some employers of the state have found a way to get around that. A service charge has been added for the delivery of meals from those people who are waiting on the customers and instead of giving that money to the employees they are pocketing that money and calling it the increased cost of serving the meal.

Opponents' Testimony:

Stuart Doggett, Montana Innkeepers Association said his organization does not seek to create further tension between employers and employees who are experiencing specific labor disputes. Their concerns are the policy implications on the statewide industry. This bill fails to recognize the many ways the industry handles banquet tips, service charges and wages in general.

Informational Testimony:

A list of the various organizations and clubs being represented at the hearing. EXHIBIT 10

Questions From Committee Members and Responses:

REP. MARSHALL asked if the contracts which were negotiated are all identical and why could this issue not be negotiated? Mr. Judge said he did not personally negotiate contracts, but they are not all identical. He said the problem was the spreading abuse of a legislative policy that was established by this legislature in the state to provide that the gratuity would, in fact, go to the employees.

REP. FORBES questioned the negotiations. Melissa Case said this is not a labor issue. Most of the employees are not represented by organized labor. This is a fair business practice issue more than it would be a labor issue. The reason for the distribution of various contracts was because it indicated what the situation could be like. These people are not represented by organized labor. They deserve the same right to have those tips from the banquets.

REP. BARNETT asked if the contracts were done unilaterally when they were worked out. Mr. Doggett said all contracts vary and are different.

REP. ELLIS asked for a response of Mr. Barnett's question. Ms. Case said employees were not involved in the decision but regardless of any notice which was or was not sent out by the corporation, the potential customers are consistent customers. There were still many people confused about this service charge. There is inconsistency on the front and back of the contract.

REP. ELLINGSON asked if a tip is the property of the employees and if there is a tip pool that is in violation of the law. John Andrew, Department of Labor said there were a line of federal court decisions that say tips which are provided to serve people essentially become the property of the person who provides the service.

CHAIRMAN SIMON questioned the establishments which shared the service charge not only to the servers but when some of that

money was given to other employees. He also asked about service charge or gratuity-what is the vast opinion of patrons and their assumptions when they see the charge for the meal? **Mr. Doggett** said he would need to clarify this and return the information back to the committee. Most customers assume the money will go to the employee and others but he did not know the exact answer.

Closing by Sponsor:

The sponsor closed.

TAPE 1, SIDE B

HEARING ON HB 344

Opening Statement by Sponsor:

REP. MARJORIE FISHER, HD 80, Flathead County said this bill was an act prohibiting the State Fund from charging a yearly minimum premium. She also provided a excerpt from the Montana Logging Association's, Montana Logger. **EXHIBIT 11**

Proponents' Testimony:

None.

Opponents' Testimony:

Carl Swanson, President, State Fund stated his opposition to this bill and provided a list of the reasons. **EXHIBIT 12**

Jim Tutweiler, Chamber of Commerce opposed this bill, but supplied some amendments. **EXHIBIT 13**

Riley Johnson, National Federation of Independent Businesses said he represented the truly small businesses and probably share the largest percentage of minimum premium payers. They have been working with the State Fund regarding this problem and have not seen the final form and feel **SEN. HARP'S** bill would better address this issue.

Don Judge, AFL-CIO said the legislature made a policy decision some time ago that the State Fund would be the fund of last resort. There would be no shared risk pool. The more money removed from premiums going into the fund the more pressure there is for downward changing of the benefits that go to the injured workers or restricting of those benefits.

Jacquelyne Lenmark, American Insurance Association said this bill will impair the Fund's ability to manage its business in the most businesslike way.

Informational Testimony:

Ardee Weiss EXHIBIT 16

Questions From Committee Members and Responses:

REP. ELLIS asked about an informal hearing process. REP. ELLINGSON said no. One of the features that is in common with this proposal and other alternate dispute resolution modes is that they do not need to abide by the strict rules of evidence in the presentation. It can be a much more informal presentation.

REP. SLITER questioned sub-section (3) and (4). Steven Maly explained the section.

REP. EWER questioned the mandatory settlement matter which is in the law. Mr. Clothier said many district courts, because of the court load have instituted a court policy of mandatory settlement matters in civil cases.

TAPE 2, SIDE B

Closing by Sponsor:

The sponsor closed.

CHAIRMAN SIMON requested the chair be relinquished to REP. MILLS.

EXECUTIVE ACTION ON HB 272

Motion: REP. ELLIS MOVED HB 272 DO PASS. REP. ELLIS MOVED THE AMENDMENTS ON HB 272.

Discussion:

REP. PAVLOVICH stated he wished the bill's action be delayed.

VICE-CHAIRMAN MILLS relinquished the chair back to REP. SIMON.

CHAIRMAN SIMON stated action would be delayed on this bill.

EXECUTIVE ACTION ON HB 234

CHAIRMAN SIMON said he had been made aware that some of the members of the committee felt that the questioning of witnesses was strong. He spoke with Mr. Cadby and inquired if he felt that in any way he was abusive and he assured the chairman they did not view it that way. He said he had offered to apologize to Mr. Bennett if they felt that was the case, but Mr. Cadby said no apology was necessary but he did admit to having strong feelings about this legislation and intends to offer an amendment on this bill.

Amendments to House Bill No. 272
First Reading Copy

Requested by Representative Stovall
For the House Business and Labor Committee

Prepared by Eddy McClure
January 31, 1995

1. Title, line 4.
Following: "LABOR LAWS"
Strike: "AND TAX LAWS"

2. Title, line 6.
Strike: "15-30-111, 15-30-201,"
Following: "39-3-201"
Strike: ", "

3. Page 1, line 25.
Following: "tips"
Strike: ", "
Following: "and"
Insert: "and"
Strike: ", or service charges"
Insert: "that are"
Following: "3402(k)"
Insert: " and service charges that are covered by section 3401"

4. Page 2, lines 23 and 24.
Following: "tips"
Strike: "1"
Insert: "or"
Following: "gratuities"
Strike: ", or service charges"
Insert: "that are"
Following: "3402(k)"
Insert: "or service charges that are covered by section 3401"

5. Page 3, line 1 through page 7, line 8.
Strike: Sections 3 and 4 in their entirety

Renumber: subsequent section

HB 272

Joy Erickson's Testimony

Mr. Chairman and members of the committee

For the record, my name is Joy Erickson. I am a banquet waitress at the Billings Holiday Inn. As you have been made aware, my wages were cut in half by the Holiday Inn's decision to keep the service charge that had previously gone to the employees. You may feel that some of the wages were high, however, when we received the tips as banquet servers, we were on call seven days a week and work many split shifts. Rarely did I work at all in January, July or August and I never made more than \$5,000 in a year. Sometimes I would be required to be at work at 5am for a breakfast, clock out with enough time to make the 45 mile round trip home to check on cows and calves, return to work at 10am to serve lunch, then clock out again after lunch and make another round trip home, check on cattle and kids who are by then home from school, then possibly returning again to work and serve dinner until 10 p.m. or so. Other times I would be on call and never work at all.

My job is what is helping my family survive on our ranch. Because of my lower pay, I've been forced to work more hours and therefore compromising the care of my family and out livestock.

Many times when we present a ticket to a guest at the end of a meal, the person in charge of the party will ask "so this is your tip?" It's difficult for me to explain to them the situation without being reprimanded by my employer. Any percentage that is added to a meal is believed by the customer to be a tip, going to the server. The terms tip, gratuity and service charge are used interchangeably and are also believed by the customer to be the same thing.

As a ranch owner and a member of the National Federation of Independent Businesses, I understand the need for an employer to make a profit, however, I do not understand why they need to do it by means of unfair business practices and THAT is truly what this is.

I urge you to support House Bill 272. I will be available to answer any questions that you may have.

Thank you.

January 31, 1995

To Whom it May Concern:

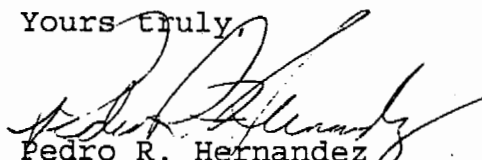
The Montana Magistrate Association Fall Conference for 1993 was held at the Holiday Inn, Billings Plaza, October 25th - 29th.

I made the necessary arrangements with the Holiday Inn for a banquet to be held October 27, 1993. I was given dinner prices and they told me there was a surcharge and it would be gratuity for persons handling the banquet. I discovered later that was not so. I argued at the initial time that it was not proper, but we could not go anywhere else as we had committed already.

I believe the surcharge was an improper fee on top of prices given to me for the banquet. I believe this is a misrepresentation of what the surcharge is for and the rightful people aren't receiving it.

Further, I believe it is an illegal charge to supplement management.

Yours truly,


Pedro R. Hernandez
Justice of the Peace
Yellowstone County, Montana

PRH:lr

10
by armat
testimony

✓ Billings Petroleum Club

EXHIBIT 10
DATE 2-1-95
HB 272

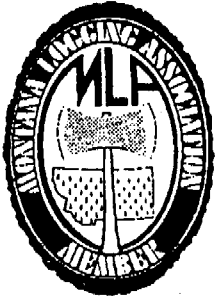
Billings Sheraton

Billings Holiday Inn

Livingston Caterer / Jewel's Catering

Fairmont 5Kims 5% off the Tips

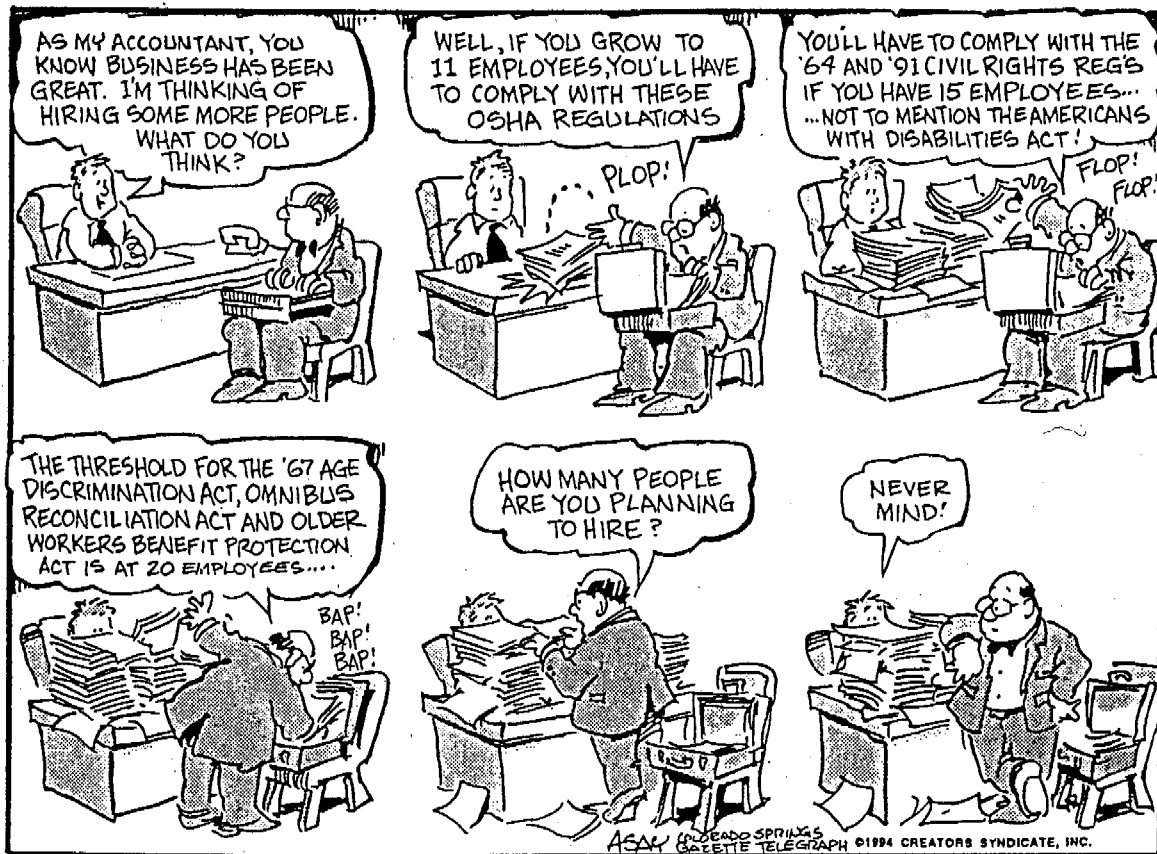
NOT GETTING TIPS

EXHIBIT 11DATE 2-1-95HB 272

MONTANA LOGGER

JANUARY 1995

The official publication of the Montana Logging Association -- Keith L. Olson, Editor / Plagiarist



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HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business & Labor

DATE 2-1-95

BILL NO. HB272 SPONSOR(S) STOVALL

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Opp
WARRELL HOLZER	MT. ST. AFL-CIO	X	
Don Judge	MT STATE AFL-CIO	X	
Cindy Moree	Waitress	X	
Sharon Reas	COOK	X	
Lynette Russell	SELF	X	
Secky Facione	SELF	X	
Staci Riley	SELF	X	
Paul Shively	MPA	X	
Jetty Brown	Sherraton Hotel	X	
Chico Mann	"	X	
Brian Dulin	MPA	X	
Melissa Gace	HERE	X	
Stuart Daggett	MT Innkeepers ASSOC.		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FOR
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business Labor

DATE 2-1-95

BILL NO. HB 272 SPONSOR(S) _____

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Mary Hall Butte	H.I.R.E 457	X	
Alice Thaxmer Helena		X	
Joy Erickson Park City, MT 89063	myself	X	
Nancy Weinzettel Great Falls	MPA	X	
James Clark	HB 269 MT ASSOC REALTORS		X
Philly Sordano	myself	X	
Kathy Malyszewski Butte	MT State Council of HERE	X	
Daphne Kirkwood Billings	myself	X	
Connie Sullivan Billings	myself	X	
Lila May Laedake Billings, Mont	Waitresses (myself)	X	
Elaine J. Graham 603-44 Ave SW	HERE #101	X	
BERTHA VUKASIN 111-13th ST BEM-	HERE #100	X	
Virginia Gosnell 320-64 St SW	HERE #100	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE T. SIMON, on February 2, 1995,
at 8:00 AM.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Alvin A. Ellis, Jr. (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Joe Barnett (R)

Members Excused: Rep. Jon Ellingson
Rep. David Ewer
Rep. Rose Forbes
Rep. Jack Herron
Rep. Bob Keenan
Rep. Paul Sliter
Rep. Carley Tuss

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 326
Executive Action: HB 359, HB 326, HB 372, HB 272

EXECUTIVE ACTION ON HB 359

Motion/Vote: REP. PAVLOVICH MOVED TO TABLE HB 359. Motion
carried 11-0.

Closing by Sponsor:

The sponsor closed.

EXECUTIVE ACTION ON HB 372

Motion/Vote: REP. MCKEE MOVED HB 372 DO PASS. Motion carried DO PASS on HB 372 11-0.

EXECUTIVE ACTION ON HB 272

Motion: REP. MILLS MOVED HB 272 DO PASS. REP. ELLIS MOVED THE AMENDMENTS ON HB 272.

Discussion:

REP. ELLIS explained the amendments.

CHAIRMAN SIMON further explained the amendments.

REP. COCCHIARELLA said under current law tips are not taxed. If the amendments are adopted there will be a situation where some tips are taxed and some are not.

CHAIRMAN SIMON said upon reviewing page 23, this includes all money due an employee from an employer whether paid by the hour, day, week, or semi-monthly, and includes bonuses, piecework and all tips. That is current law. Tips and gratuities are taxed.

REP. COCCHIARELLA said they were just defined as wages in the sections where they are being eliminated.

CHAIRMAN SIMON said state law was not being changed.

REP. COCCHIARELLA said service charges were added to tips, and are not taxed. She said the committee should not want to get into a situations where they are taxing some kinds of tips and not others.

CHAIRMAN SIMON said that area was covered by the way they have struck service charge in one place and reinserted it in another it place.

REP. COCCHIARELLA asked when these amendments are adopted are the service charges going to be taxed because they were not included in the exemption list.

Melissa Case said service charges will be state taxed. Initially, these were all covered by the same IRS code. When the fiscal note was released, that was not the case. Service charges were covered in 34-01 and not 34-02. When the bill was drafted, service charges were made consistent with the language in the tax

code with tips and gratuity. The original intent of the bill was not to touch code. The definition of service charges was the point so the employees would then receive the service charges prior to having the service charges removed. Those service charges have always been taxed.

CHAIRMAN SIMON said by adopting the amendments and passing this bill as it stands tips would be treated as they were in the past. Waitresses have paid tax on service charges. There would be a tax break.

Jerry Driscoll said in 1983 there was a bill exempting tips and gratuity from Montana income tax, because the federal government passed legislation to add 8% of the gross revenue. There were certain restaurants where an automatic service charge was placed on the bill. Because service charges were not addressed in the 1983 bill, the Department of Revenue said if it appears on the W-2 form as a service charge it is taxable. If it appears as a tip or gratuity it is not taxable. On the filing form, tips must be reported and an adjustment is made. If this bill passes with the amendments and if the W-2 shows a service charge, taxes will be paid.

CHAIRMAN SIMON suggested the remainder of the action on this bill be delayed.

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL

DATE 2-2-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chair, Maj.	X		
Rep. Bob Pavlovich, Vice Chair, Min.	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson			X
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer			X
Rep. Rose Forbes			X
Rep. Jack Herron			X
Rep. Bob Keenan			X
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter			X
Rep. Carley Tuss			X

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE T. SIMON, on February 7, 1995,
at 8:00 AM.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: Rep. Bob Keenan

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 196, SB 125, HB 342, HB 387
Executive Action: SB 196, SB 125, HB 342, HB 272, HB 344

HEARING ON SB 196

Opening Statement by Sponsor:

SEN. DELWYN GAGE, HD 43, Glacier County said this bill was an act
repealing the Montana Ratemaking Act.

Vote: Motion to adopt the amendments of SB 125 carried 18-0.

Motion/Vote: REP. ELLIS MOVED SB 125 BE CONCURRED IN AS AMENDED. Motion carried 18-0 with REP. FELAND carrying the bill on the floor.

EXECUTIVE ACTION ON HB 342

Motion: REP. PAVLOVICH MOVED HB 342 DO PASS.

Vote: Motion carried 18-0 on HB 342.

EXECUTIVE ACTION ON HB 272

Motion: REP. COCCHIARELLA MOVED HB 272 DO PASS. REP. COCCHIARELLA MOVED THE AMENDMENTS.

Discussion:

REP. COCCHIARELLA explained the amendments.

REP. MILLS said it was a shame this issue must come to the legislature to require a business to do what they should do on their own.

Vote: Motion carried to adopt the amendments on HB 272. Motion carried 18-0.

Motion/Vote: REP. COCCHIARELLA MOVED DO PASS AS AMENDED. Motion carried 18-0.

EXECUTIVE ACTION ON HB 344

Motion: REP. PAVLOVICH MOVED TO TABLE HB 344.

Vote: Motion carried 18-0.

CHAIRMAN SIMON requested a recess at 9:20 AM. Committee reconvened at 10:00 AM.

HEARING ON HB 387

Opening Statement by Sponsor:

REP. WILLIAM BOHARSKI, HD 79, Flathead County stated this bill was an act clarifying that an insurer may give premium discounts to an insured based upon favorable aspects of the insured's driving record.

HOUSE OF REPRESENTATIVES
BUSINESS AND LABOR COMMITTEE

ROLL CALL

DATE 2-7-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chair, Maj.	X		
Rep. Bob Pavlovich, Vice Chair, Min.	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan			X
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on March 11, 1995, at
1:30 P.M.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. Gary C. Aklestad, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. James H. "Jim" Burnett (R)
Sen. C.A. Casey Emerson (R)
Sen. Sue Bartlett (D)
Sen. Fred R. Van Valkenburg (D)
Sen. Bill Wilson (D)

Members Excused: Sen. Steve Benedict (R)

Members Absent: None.

Staff Present: Eddy McClure, Legislative Council
Mary Florence Erving, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 272

Executive Action: None

{Tape: One; Side: One}

HEARING ON HB 272

Opening Statement by Sponsor:

REPRESENTATIVE JAY STOVALL, HD 16, stated HB 272 is an act clarifying certain labor laws and tax laws to include a service charge received by employees of the food, beverage, and lodging industry. House Bill 272 amends the labor act to define service charge. A constituent approached **REPRESENTATIVE STOVALL** about a Billings hotel that charged a 18% gratuity rate, before the money had always gone to the employees. Nonetheless, the policy was changed and the money began to go back to the business. Although the employee's hourly wage was increased, the take home pay was decidedly less.

Proponents' Testimony:

Melissa Case, Hotel Employers and Restaurant Employees Union, stated concern from the many waitresses/waiters she represents. **Ms. Case** explained that tips and gratuities are the sole property of the people receiving the tip. The problem HB 264 attempts to correct is a loophole in the tip or gratuity definition, concerning a service charge. The gratuity is intended for the same purpose, it is perceived by the public to be the same. House Bill 272 amends the MCA to define the language to be consistent with the definitions of tips and gratuity. House Bill 272 passed out of House Business and Labor committee with a margin of 18 to 7, and passed second reading with a vote of 99 to 1. **Ms. Case** discussed the bill. On page 1, line 24 through page 2, line three, the term service charge is defined to mean an arbitrary fixed charge added to the customer's bill by an employer in lieu of a tip. It is collected by the employer and must be distributed either directly to the employee preparing or serving the food or beverage or pursuant to a tip pool agreement. The definition is the crux of the bill.

Ms. Case directed the committee's attention to the following section of the proposed bill. Page 2, twenty-two to 28 excludes service charge, as it excludes tips and gratuities. Page 2, line 30, "Service Charge" means an arbitrary fixed charge added to the customer's bill by an employer... Page 4, line 67 concerns Section 3401 of the Internal Revenue Code of 1954.

Eddy McClure, legislative staff person, drafted the proposed bill. **Ms.. Case** stated the hotel industry has taken service charge monies and used the funds to increase employee wages. Although the employees did get a raise, the money did not begin to equal former wage levels. More important, the customer is confused about who gets the service charges. The identical language is still in the contract. There is confusion on the contracts, where the word tip, gratuity and service charge are used in the same contract. The language confuses the public. **Ms.. Case** stated a concern that the problem will not be solved, even if the bill passes because the industry will come up with another term for a service charge. The union does not think another term would be as deceptive a term, as is "service charge". The word is tied to and perceived to be the same as a tip or gratuity. The union believes, after talking to John Andrew, Labor Department, the definition would cover other terms, as long as those terms' true definition was consistent with the one used to define service charge. The definition still says it is a service charge, and the union believes that it would still be covered under HB 272. The bill closes a loophole in current law and attempts to end what is considered to be an unfair business practice..

Kelly Sondeno, Holiday Inn Banquet Server, Billings, MT stated her wages were cut in half by the Holiday Inn system, due to the new "service charge" policy. Service charges had previously be

distributed to the employees. Some people may think the wages were high, but there are other factors that need to be considered. The banquet servers are on call seven days a week; must work split shifts; work seasonal months and may be required to be at work at 5:00 a.m. The odd works hours could end well after a 10:00 p.m. meal and the subsequent clean up activities. Other times, the waitresses/waiters are on call and need to be ready to come to work. Sometimes, they are called to come to work and other times they are not called. **Ms. Sondeno** stated concern with the pay rate and hourly schedule, since the gratuities are retained by management. **Ms.. Sondeno** stated she was placed in uncomfortable positions when customers asked her if part of the charge was for tips. Customers think that any percentage, added to the meal, is a server's tip. The terms tip, gratuity and service charge are used interchangeable and believed by the customer to be the same. **Ms.. Sondeno** handed out exhibits (**EXHIBIT 1**). **Mr. Joe Sarne, Billings, MT** wrote a letter to support HB 272. **Ms. Sondeno** urged the committee to support HB 272.

Kathy Malyevac, President, MT State Council of Hotel Employees and Restaurant Employees (HERE), Butte, MT, stated the council represents hundreds of tipped employees, including banquet tipped employees at many of the major banquet facilities (**EXHIBIT 2**). The facilities include the Northern in Billings, the Heritage in Great Falls, the Outlaw Inn in Kalispell and the Copper King Inn in Butte and Fairmont Resort in Anaconda. In most cases, tipped employees earn minimum wage and rely on their tips to live. The work is seasonal, part time, and allows for few benefits. Until 1994, tips, even if they were called something else like gratuity or service charges, were passed along to the employees. Last year (1994), some major banquet employers in Montana began retaining gratuity or service charges. The practice resulted in a dramatic loss of income for the employees and was deceptive to the customer, who generally thought a gratuity or service charge goes directly to the employees. The council has no problem with employers setting a fair price for the goods and services; they have full leeway to set a price per plate, per event, or per meal. When employees negotiate how tips are to be divided among themselves in an establishment, they make fair decisions. **Ms.. Malyevac** provided copies of tip pool agreements negotiated into Union Contracts (**EXHIBIT 3 & 4**). The tips are received by the employees providing the services. House Bill 272 continues the tip protection to all banquet employees.

Connie Sullivan, Billings Petroleum Club, Billings, MT stated she was a waitress at the Billings Petroleum Club for over five years. **Ms. Sullivan** stated HB 272 is not just a banquet waitress issue. As a dining room waitress in a club that routinely added service charge to all checks, the dining room waitresses had the same problem as banquet servers. **Ms. Sullivan** stated she left her job because of the tip issue. Customers were surprised the service charge was not going to the servers. As members of a private club, they assumed the waitresses/waiters received the

money. The service charge always appeared on their bill. On June 17, 1992, Jim Gunderson, General Manager Billings Petroleum Club, wrote Job Service, "Since the Billings Petroleum Club is a private club that charges a service charge and not a gratuity, we can allocate any percentage to the employees, whether it is 12.5%, 10% or 0%. House Bill 272 is about notice to their customers. Ms. Sullivan asked for support of HB 272.

Lynette Russell, Livingston, MT stated she worked in the food service industry for over twenty years. **Ms. Russell** stated she is a single mother of three children, and the industry afforded a better life for her children than another job that would have provided an hourly wage or minimum wage. **Ms.. Russell** stated concern about the growing practice in both large and small Montana cities. More employers are assessing and keeping the service charges. **Ms. Russell** stated she worked for a caterer and received an hourly wage. At one of her jobs, when the customers asked her about the tip, she replied it was included in the bill. She was wrong. Afterwards, the employer kept the tip, and she received only a minimum-type wage. When **Ms. Russell** discussed the situation with her second employer, the employer thought it was a good idea and contemplated keeping the service charges, as well. **Ms. Russell** stated she cannot afford to work for \$6.00 an hour. She does not want to work in a situation where the customer has the wool pulled over their eyes.

REPRESENTATIVE NORMAN MILLS, HD 19, Billings, MT stated he is a member of the Billings Petroleum Club. **REPRESENTATIVE MILLS** stated when he found out the service charge did not go to the servers, he let his opinion be known. **REPRESENTATIVE MILLS** stated he does not know what the club has done to solve the problem, since he has been legislating in Helena. The same situation is happening at other hotels, such as the Northern Hotel and the Holiday Inn West. **REPRESENTATIVE MILLS** urged the committee to support HB 272. The people work to maintain their families. Sometimes the tips make the wages. Back in 1944, **REPRESENTATIVE MILLS** stated he had dinner at the Ambassador Hotel, New York City, New York. The waiter said he paid more than \$20,000 out of his pocket to management, so that he could work at the Ambassador Hotel. He knew what the money was for and what it would be used for. He had a choice to work at the Ambassador or not to work at the Ambassador. People affected by HB 272 do not have the choice, the choice is made by the employer in an unfair and uneven manner.

Don Judge, MT AFL-CIO, Helena, MT, stated he is not going to review the historical agenda of tip related legislation in Montana, although there has been a great deal of similar legislation over the years. Current law allows for the employees to keep their tips and be paid minimum wage. House Bill 272 is not an effort to repeal the provision, but an effort to make clarification. When employers use deceptive practices to get around statutes, the legislature needs to fix the law. Especially when the employers do not obey the law or interpret the law

according to management's wants. Organized Labor became aware of the problem when a letter carriers organization scheduled a banquet at the Holiday Inn in Billings. More than 150 people attended the banquet. They signed a contract for an 18% service fee. One side of the document said service fee, the other side said gratuity, and they understood the employees would receive the monies. They were concerned to find out the management received the added monies.

Blaine Jensen, Holiday Inn West Banquet Server, Billings, MT read letters from the Holiday consumers (EXHIBIT 5).

Curtis B. Haney, Executive Director, Friendship House of Christian Service, Billings, MT, submitted written testimony in support of HB 272 (EXHIBIT 6).

Dennis L. Hall and Robyn Butler-Hall, Billings, MT, submitted written testimony in favor of HB 272 (EXHIBIT 7).

Denise Gorham, Billings, MT, submitted written testimony in favor of HB 272 (EXHIBIT 8).

Anthony Ulmar, Billings, MT, submitted written testimony in favor of HB 272 (EXHIBIT 9).

Jody and Gordon Renner, Billings, submitted written testimony in favor of HB 272 (EXHIBIT 10).

Opponents:

Stuart Doggett, Montana Innkeeper Association, stated opposition to HB 272. Mr. Doggett stated there is a great deal of information that was not presented during House debate, and that information would be presented at this time. The association does not attempt to create overt tension between employees and employers, who are experiencing specific labor and wage disputes. The concern is about policy implications in a state-wide industry. Mr. Doggett highlighted the following. The bill fails to recognize the many ways the industry handles banquets, tips, services charges and wages for hotel and motel employees. No uniform method of handling these topics existed. Other properties assess a service charge which is then used to increase the hourly wage of banquet employees working at the property. There is no magic formula on how tips and service charges should be handled. Each business and each hotel's operation is different. As a result, operators should continue to be afforded flexibility to establish a system that treats the employees fairly and creates a system that delivers quality service for all guests. As an association manager and a meeting planner, Mr. Doggett stated he had been notified by a Billings facility that they had, and others were moving towards the practice of a service charge. There is no secret. Passage of HB 272 insures more government involvement in private sector operations. The association suggested the legislature let the current system

work. Understand there are good employers and there are bad employers. Good employers can keep employees year after year and retain good, hard working employees. There is constant turnover, from a manager's level to the most entry level position. The managers with the best and fairest management systems have the most success and enjoy successfully serving the public. The association urges the committee to seriously consider the impact of HB 272 and urges the committee to defeat the proposed legislation.

Mark Zovic, District Director, Larken Inc, Bloomington, MN, stated opposition to HB 272. Larken Inc. is concerned that government is getting involved in private sector operations. The flat fee only goes for banquet waitresses. The dining room and lounge waitresses get 100% of their tips. In the banquet area, most people came out equal or better. There was a great disparity between what banquet waitresses/waiters made for wages for the different shifts, breakfast, lunch, or dinner. The top waitresses/waiters at dinner time could come in, work two or three hours, get their tips, and leave. The rest of the waitresses/waiters would have to work at minimum wage, work their shifts, and clean up. Larken tried to set the wage rate at \$8.00 an hour for all functions, and made the change in order to be fair to all workers. Marriott has also worked towards correcting like-problems. The best solution is to level the playing field and give \$8.00 an hour or a rate. The wage issue is reviewed on an ongoing basis and factors in other increases. Only banquet waitresses/waiters are involved in HB 272. All other waitresses/waiters get one hundred percent of tips.

Lonnie Funk, Regional Vice President, John Q Hammons Hotels, Kansas City, MO; former 12 year general manager of Holiday Inn, Billings; and former president Montana Innkeepers Association, stated the intent of HB 272 is to require the employer to include service charge as part of the employee wage. The current policy in Banquet Employee Compensation system is: The company currently pays the service employees a flat hourly wage, somewhere between \$7 and \$9.50 an hour. The average is approximately \$8.00 an hour, depending on the length of service and job responsibility. In the Hammons system, no tipping or gratuity, paid to the employees by the guests, are required. The service charge, paid by the customer to the hotel, is considered hotel revenue. The Holiday Inn, John Q Hammons Hotels oppose HB 272 because it would mandate that service charges be paid to service employees as part of their wages. The history of the service charge is interesting. In July 1993, 35 of the 37 John Q Hammons Hotel converted to the flat wage compensation system for banquet servers, banquet set ups, banquet management, kitchen management, catering management, and food and beverage directors. The two hotels that are exceptions were excluded due to pre-existing union contracts. Prior to changing to the new format, Hammons researched how other major hotels companies were compensating their banquet employees. The process took over four months to complete. The list of employers who were interviewed

was Holiday Inn, Sheraton, Red Lion, Marriott, and Radisson, and Ramada. One hundred percent of Marriott's are utilizing the same format that Hammons is using. Hammons completed a comprehensive wage survey in all 37 hotel markets, for all affected positions that were formally included in a tip distribution system. The average wage was determined by taking the minimum wage, and determining the average hourly tip throughout the course of the year. Hammons took all of the gratuity, divided by the number of hours worked, and arrived at an average per hour. The minimum wage was calculated, plus the average hourly banquet tip, and the two figures were added together. They added an additional 25, and came up with the decided wage. There was never an effort to take the money and distribute it back to the hotel (EXHIBIT 6).

Mr. Funk stated the hotel choose the flat wage compensation format for the following reasons. One, the system was the most commonly accepted system throughout the country for compensating banquet and management employees. Two, the system allowed the hotel to easily track, and consistently pay competitive wages. Three, the hotel could guarantee employees the wage they were going to be paid, whether they worked a breakfast, lunch, dinner, coffee break or reception. To date, there have been no other legislative challenges to the compensation system, as it is becoming a very common practice in most states. The history of the transition of the property in Billings is as follows: In 1993, the hotel raised the hourly banquet servers' wages from a minimum of \$4.25 plus a portion of the gratuity to a wage of \$6.75 to \$9.25 an hour, depending on length of service and job responsibility. There is a starting wage, a ninety day rate, and a one year rate. The change did not impact any of the restaurant employees. The employees received 100% of their tips. The wages, determined in July, 1993, were increased again by 25¢ per hour on January 7, 1994. The wage is currently between \$7.00 and \$9.50. There are three full time servers, three part time servers, and one supervisor currently employed, who had worked in the former distribution system of a current staff of 26. The hotel has had no problems recruiting applications for servers at a starting rate of \$7.00 per hour.

In 1993, employees utilized the right to try and organize a collective bargaining unit. The banquet wage item was a key issue. The union was voted down 99 to 17. In 1994 and the early part of 1995, some employees again utilized their rights to try organizing collective bargaining. The banquet wage was still one of their issues. This time the union was voted down 91 to 47. It is apparent that the minority voice of opposition is now attempting to get the state legislature to enact a law that they believe will mandate. They should receive the hotel's service charge revenue. Holiday Inn, Billings and John Q Hammond Hotels is opposed to this legislation for the following reasons. One, it will require the employer to include service charge as part of the employees wage. As a result, Hammons Hotels will be required to pay local than competitive wages. Two, Hammons Hotels will be forced to raise the prices, which could make the hotel

uncompetitive in the market and reduce revenues. Third, Hammons Hotels could be forced to lay off employees or substantially reduce the number of employees in the respective department or other departments to help offset the wage cost increase. The hotel is already paying the highest hourly wage in the market. The hotel believes the owner of the business should have the right to decide where the tipping or gratuity are required. The majority of the employees feel that the flat, hourly wage system is fair because the employees know what hourly wage they are going to make per hour, whether they are working breakfast, lunch, dinner, coffee break or reception in a seasonal concept. In establishments where banquet business is large portion of the overall operation, it is no longer practical to utilize service charge distribution, as a form of compensation. It creates a huge discrepancy in wages for similar work for department to department by taking away of hotel revenue necessary to pay other employees. Equal pay for equal work is the theme. **Mr. Funk** stated he was not sure if it was fair that the hotel pays a banquet employee \$12.00 per hour to work the banquet, and then pay a maid \$5.00 per hour to clean rooms for eight hours. The hotel believes a service charge required from the customer to be paid to the hotel is hotel revenue. The hotel has the legal right to do whatever the hotel wishes with the revenue, just as every other business. Business and other industries, such as banks, repair shops, clothing stores and private clubs require the customers to pay service charges. The same businesses do not allow tipping. There is no reason to single out the hotel industry. The flat wage system is fair to all employees, according to the hotel. The state government should be involved in how employees are paid to the extent the hotel requires minimum wage and other conditions. Uniformity between all employees is the goal. Where state government attempts to provide special benefits to certain classes of employees, the state unfairly penalizes those classification whose wages must necessarily be reduced to pay for the additional benefits mandated by state law. No other state in the union has this type of legislation. It was attempted in California and was abandoned because it proved to be unworkable. John Q Hammons Hotel, along with the sister company, Winegarden and Hammons, do business in 38 states. There have been no challenges to the compensation system in another state. **Mr. Funk** urged the committee to reject HB 272.

Tom Hopgood, Attorney, representing Holiday Inn, Billings, stated he has seen more than one bill this session come out of the House by a 99 to 1 vote margin only to stall in the Senate. House Bill 272 is like the little boy who tried to kill the goose that laid the golden egg. **Mr. Hopgood** stated he "sees" a situation in a small number of hotels, which are paying their banquet employees the highest wages in the market. The hotels eliminated the existing tip pools that existed. The gratuities were split among the people who worked there and imposed a service charge. Then, they increased the wages in hopes of equalizing the wages in the work force. Some of the employees did not get paid as much and

had to work longer hours to get the same amount. Some employees, perhaps the majority, ended up making more. There is a legislative attempt to go back to the old way of doing things. The banquet people want to keep the higher wages and also get the tips.

Mr. Hopgood stated when he takes his car into the auto mechanic for new parts, and when the work is done, there is a service charge. All the labor charges that are paid for the mechanic do not go to the mechanic. The charges goes directly to the owner of the franchise, who turns around and pays a flat wage. Likewise, for value added service, the attorney uses a paralegal services to do certain legal work. The paralegal is paid a fixed salary. The charge for the paralegal's time is subtracted from the total charge. The difference is the service charge. The paralegal does not get the difference between the salary and what is charged out. The amount goes into the operating fund, used to pay the overhead. All of the value added goes to the person that is providing the service, rather than to the owner of the business.

Questions from Committee Member and Responses:

SENATOR EMERSON stated the bill talks about IRS, section 3401. Eddy McClure stated there is a definition of language and an explanation of what a service charge is under the IRS code. Ms. McClure stated she would get SENATOR EMERSON a copy of IRS codes. SENATOR EMERSON asked if the definition ties it in with a tip. Ms. McClure stated there are two sections of IRS Codes listed in the bills. The federal government deals with the definition separately and under difference sections. CHAIRMAN KEATING stated it deals with the income tax levels, or the percentage of tips that are subject to income tax and the payroll tax. The IRS ruled that 8% of the gross proceeds from the restaurant were considered the level of tipping and that would be subjected to income tax.

SENATOR EMERSON stated generally tips are given to try to get better service. Tips are like merit pay. Was there lowering of the service level because the tips didn't get back to the waitress. There was no apparent tipping to the waitress/waiter. Mr. Funk replied that if the overall service records were surveyed for the last couple of years. Whatever drops in customer service perception would probably be due to management's ability to properly manage and train the employees, versus from the employee's way they did their job. There is a lot of pride within the banquet service staff to ensure the customer is well taken care of. Taking care of the customer means repeat business. The wage, whether it is paid by a minimum wage, plus a portion of gratuity or flat wage is totally determined upon by how many hours are worked. The waitresses/waiters work only when there is business.

SENATOR VAN VALKENBURG recapitulated **Mr. Funk's** testimony about the industry practices' nation wide and how those practices apply to what is happening in Montana. The John Q Hammons Hotels is the Holiday Inn Corporation. What is the real issue is not what are the wages of employees, but whether the customers are being deceived in the contract. The hotel-restaurant people have highlighted the fact that what the Hammons Hotel referred to as a service charges, is included in the contract and acknowledged as a gratuity. How can customers not be deceived, as to what is the purpose of the charge, when it is written in the contract. The Right to Life Association had a banquet at the Holiday. Their contract said the service charge is a gratuity. **Mr. Funk** stated he did not know what the date was of the example contract, which was passed out by the proponents. But the hotel revised the contracts on more than one occasions to correct the inconsistencies relating to service charge or gratuity. Employees brought it to the hotel's attention. Employees in the sales and catering departments and/or in the contract and sales departments have had outdated contracts for two or three years. The hotel is at fault for being inconsistent and for not properly informing the customers. The corporation acknowledges the fault and takes full responsibility. At the same time, however, the hotel is in the process of making sure that like problems do not happen on a continuous basis. It was never the intention of the corporation to misinform the customer. The hotel has seven people in the office, and sometimes, as in everybody's business, all the information may not be conveyed to each person in the exact same manner. Fourteen hotels are inconsistent in management practices and may not have informed all their people. Sometimes, the person who signed the final check is not the same person that signed the contract and may not even be aware of the practice. A company does not stay in business in Montana or anyplace else by deceiving the customer.

SENATOR VAN VALKENBURG asked why won't the company either charge the full charge amount for the meal, the amount they want to charge for the meal. The companies should be able to say "this is how we do business", rather than break up the charge into \$8.00 a plate, plus the service charge. Why won't the Holiday Inn simply put out a sign on the table that informs the customer not to tip the employees and to inform the customer the Holiday employees are paid more than what other restaurants pay their employees. Simply tell the customers what the hotel is really doing. **Mr. Funk** replied legislation may be passed and hotels may end up doing exactly what **SENATOR VAN VALKENBURG** described. However, from a good business practice point of view, hotels need to better inform customers. The situation that is being discussed may be the exception, not the rule. The Holiday Inn works approximately 250 functions per month. Certainly, there may be people who did not understand or were not listening to the information being discussed concerning such issues. Perhaps, they were not even told, but there are other cases where the customers were told and the customers did understand. Competition takes care of any problems. If the company deceived

the public, they go elsewhere. **SENATOR VAN VALKENBURG** stated he is concerned about whether or not all employees are sharing the tip. "Waitpeople" do a fine job, but there are dishwashers, bus people, cooks, etc. who might not be sharing the tip money. The people who serve the customers directly may or may not have to do work that is as hard of work as the other workers have to do.

SENATOR VAN VALKENBURG stated he liked the idea about the service charge. In a sense, the service charge might be distributed to every employee, as opposed to just the waitress/waiter who has the one-on-one contact with the customer.

Ms. Case explained there is a tip pool agreement. The tip laws are the absolute property of the person receiving the tip. So management cannot be involved in the negotiation of the tip pool agreement. **Kathy Malyevac** tried to point out that employees are responsible for negotiating tip pool agreements. A tip pool agreement could read that the waitress/waiter received tips, and a certain proportion goes to the cook, the dishwasher, etc. Tip pool agreements do happen. In union negotiated contracts, the tips are negotiated for the cooks, wait staff and for dishwashers. **Ms. Case** stated it has been her experience, as a former waitress, the practice of having a tip pool was done without organized labor's intervention. The practice is common. It is uncommon for management to negotiate tip pool agreements, since tips are the sole property of the employees receiving tips.

SENATOR BURNETT asked **Mr. Funk** if the hotel would go to a pooling agreement. **Mr. Funk** replied the hotels would not necessarily go to a tip pool arrangement. **SENATOR BURNETT** stated he was interested in the topic, called wages. Wages have been increased to take care of the difference. **Mr. Funk** replied the hotel would have the option of two or three different alternatives, should the law become a reality. One, obviously, would be to go back to the tip distribution system. Another would be to list the entire price. The price would be the set amount, and the employees would continue to be paid the same, as they are today. The hotel has certain labor margins that must be worked within. Other costs continue to escalate. Every time an increase happens, something else has to be adjusted. There must be returns on investments. All options would be considered to determine how things can be kept level. **Mr. Funk** stated the new policy came as a result of trying to be fair, and trying not to impact the restaurant employees. The adjustment was arrived at by trying to pay the same wage to every person, every shift.

{Tape: One; Side: Two}

SENATOR SUE BARTLETT asked Attorney Tom Hopgood how often he tipped the mechanic who worked on his car. **Mr. Hopgood** said that he doesn't tip his mechanic. **SENATOR SUE BARTLETT** asked **Mr. Hopgood** how often does his clients tip the paralegal at his law office. **Mr. Hopgood** stated the paralegals do not get tips. Why, then, are the examples **Mr. Hopgood** gave considered analogous to an industry where it is customary to tip the waitress. **Mr.**

Hopgood stated that is the point he was trying to make. In a situation where a business is adding a service, such as a mechanic or a paralegal, that service charge added for the service performed goes to the owner of the business. The owner makes it possible for the mechanic, paralegal, etc. people to have a job. In this situation, it is also a service charge. It is not a tip. **SENATOR SUE BARTLETT** stated it is a tip. So, why does changing the name, make a difference, given the historical practice of the hotel and restaurant business. **Mr. Hopgood** stated there is a difference between a tip and a service charge. A service charge is something that goes for the job that is done, not something that is extra. Instead of a tip, the banquet workers received an increase in wages. There is no tip. Instead there is a service charge. The service charge enables the owner to pay the increased wage, which the employee is given, instead of a tip. **SENATOR BARTLETT** asked **Mr. Hopgood** if he was aware that in Montana it is illegal for employers to take the tips from employees and use those tips to increase wages. **Mr. Hopgood** said he was not aware of the law. The statute is the tip laws that have been referenced to earlier in the hearing debate. **SENATOR BARTLETT** asked **Mr. Hopgood** if this is simply an effort by the hotel and restaurant industry to call a rose by a different name, and be able to get around the law. The law specifies they cannot take tips from the employees in order to increase the wages. Is this an effort to avoid coming under the strict letter of the law. **Mr. Hopgood** said he heard testimony about the service charge being misleading, confusing, and a fairness issue. In addition, it has been alleged that the customer thinks the money is going to the person who is serving the meal. If there is a problem, **Mr. Hopgood**, stated he would suggest looking at a statute enacted in another state. The particular statute required disclosure that the service charge was not distributed to the employee. If that is truly what the legislation is after, "not misleading the customer, misrepresenting, and eliminating confusion", the Holiday would work with **Ms. McClure**. The Holiday would disclose the service charge does not go to the people providing the service.

SENATOR BILL WILSON asked **Lynette Russell** if she would object to answering a somewhat personal question. **Ms. Russell** did not object. **SENATOR WILSON** asked if **Ms. Russell** was on any type of government assistance. **Ms.. Russell** stated the service industry is a seasonal business. In the winter, **Ms. Russell** stated she receives heating assistance, but has tried to avoid any other type of assistance. **Ms. Russell** stated she had to take another job on many occasions. It would be different if she worked for minimum wage. **Ms.. Russell** stated she works a job where she received tips or gratuities because the situation works best for her. **SENATOR WILSON** stated the program **Ms. Russell** is on is energy share, which is not a government assistance. Utility customers contribute to a pool that is distributed to those people who need assistance. **SENATOR WILSON** asked **Ms. Russell** what was her usual wage is. **Ms. Russell** stated she is working for \$5.00 per hour, plus tips. As the law reads now, **Ms. Russell**

reported she sees violations of what happens to the tips she currently makes. **Ms. Russell** explained she was asked by the owner to pay, out of tip money, the bills for customers who walked out of the businesses without paying the bill. A couple of days ago, when she received tip money, money had been taken out of the tip and, evidently, paid against her open check. **Ms. Russell** stated every place she has ever worked, all of the other employees are tipped out, the dishwasher, bartender, etc. **SENATOR WILSON** commented on **Ms. Russell's** testimony, asking if **Ms. Russell** would rather receive tips, rather than just get the higher wages. **SENATOR WILSON** asked if by getting the wages, plus tips, could she better keep the attitude of a productive person. **Ms. Russell** said yes. She stated paralegals and auto mechanics make more than \$6 to \$9 per hour. If she was making \$9.00 an hour or more, she would be pleased. Anything less than \$10.00 an hour does not pay for housing and food, the reason why people take two jobs. The service charge is a growing practice. The new practice may force people to have to have two jobs. **Ms. Russell** stated she would rather work for an hourly wage, plus tips.

CHAIRMAN TOM KEATING asked **Connie Sullivan** what was the hourly wage she had made at the Petroleum Club. **Ms. Sullivan** stated the wage was \$4.25, without any pay increases. **CHAIRMAN KEATING** asked if she received the minimum wage in the beginning, plus gratuity. **Ms. Sullivan** replied she made the \$4.25 plus 12.5%. It was 15% on the customer's bill. Two and one half percent went to the busers and 12.5% went to the server. **CHAIRMAN KEATING** asked who arranged the tip pool. Was the tip pool between the employees, or at the direction of the employers. **Ms. Sullivan** stated management initiated the tip pool. **CHAIRMAN KEATING** asked if **Ms. Sullivan** ever determined what her hourly wage was when she added the hourly wage plus tips. The money varied because of the nature of the business. Valentine day was always busy, but other days were not. **Ms. Sullivan** stated, at tops, she could make as much as \$150 in tips, plus four or five hours worth on minimum wage. On other days, the tips may be only \$75. **Ms. Sullivan** stated she was making well over \$10.00 an hour, on an average.

CHAIRMAN KEATING asked **Ms. Case** about the language of the bill. **SENATOR VAN VALKENBURG** pointed out the theme was about customer notification and was woven through most of the testimony. The Holiday complaints were over the service charge not being gratuity. Customer notification seems to be the biggest point of contention. There is nothing in the bill that requires customer notification, regarding the industry's meaning of service charge, gratuity, or tip. Even if the legislation passes, if the employer uses other names, there still is no legal requirements for customer notification. **Ms. Case** stated she had talked briefly about how the legislation should be structured and how the language should be written. If you call "this" a service charge, and all the money goes to the employee, there is no problem. If the name of the service charge is changed, the employers would still come under the law. The money would still

have to be given to the employee. The reason why the union choose not to go with just a notification is because there is a variety of people dealing with the contract. The person signing the contract may or may not be the person who pays for the bill. To eliminate the vast amount of confusion, it was easier to say "if you are going to say service charge, tip, gratuity, etc., treat them all the same." **CHAIRMAN KEATING** stated the legislation is written for the expressed benefit of banquet waitresses/waiters. The legislation does not affect general waitressing. The waitresses/waiters in the restaurants and in other places are still keeping the tips left on the table. **Ms. Case** stated there is some exception to those rules. **CHAIRMAN KEATING** stated he was wondering if there was any impact on the restaurant's waitress/waiters. **Ms. Case** replied if it is a tip, the employee keeps the money. In the case of the Petroleum Club, the service charge goes through management. When people go to private clubs and/or pay by credit card, and the term, service charge, is used, the law might affect some floor waitresses. **SENATOR KEATING** said in some restaurants, management will say there is no tipping, but there is a 16% service charge that is added in lieu of tip. The customer pays the tab, and believes that is the tip for the waitress (because the 16% is historically the amount used to compute tip amounts). If there is are restaurant and banquet waitresses in the same establishment, a problem may arise when management says there is no tipping. The restaurant waitress/waiter will be impacted. If the banquet waitresses/waiters force this kind of language on the employer, the employer can price everything and not allow tipping. . **Ms. Case** stated she understands the concern about adverse effect on pooled waitresses. The union realized the risk, but it would be bad public policy to put up a sign that says "no tipping". **Ms.. Case** does not think restaurants would establish that practice. **CHAIRMAN KEATING** recapitulated. The committee is asked to impose a law for the benefit of a small group within the food service industry. For every action, there is a reaction. Legislative mistakes have been made before and the subsequent adverse impact if found out later. **CHAIRMAN KEATING** stated the theme of tipping is historical. Sixteen percent has been the norm, nothing less. If 20% is given, the waitress understands a good job was done. Customers realize the normal tip percentage is 16%, whether they are at a banquet or at a restaurant. Tipping is a part of the whole program. That is why it is perceived as dishonest by the manager to "say" service charge is 16%, because that is the customary rate of tip. So the customer presumes the service charge is going to the employee. Customer notification is the area that really is the topic of discussion. If the union wants to take the service industry and the banquet waitresses back to where they were, and management says that is not fair to all the employees. It is not helpful to the business. There is no language in the law that says they have to require tipping or gratuity in a banquet situation. Management can go to just a single price for the banquet and not have a service charge, and continue to pay the hourly wage. The employer will still be conceived as being competitive because everyone else will be

adding a gratuity. If the employers are paying the waitresses/waiters \$8.50 to \$9.00 a hour, the customer negotiating the contract will feel the situation is fair.

CHAIRMAN KEATING said there is no gratuity in the price, if you liked the service and want leave money on the table, a person can leave money. Sometimes, banquet customers have asked to leave cash, only to find out the tip was not included in the check.

CHAIRMAN KEATING asked **Ms. Case** if she thought the proposed language will accomplish what the union set out to do. **Ms. Case** stated she

wished she could stand up in front of a legislative committee, all the time, and say she was absolutely sure the language will accomplish the task. The drafting was a complex process, so a diligent, fine-tuning attempt has already been made. The objection and intention was covered within the legislation. **Ms. Case** stated the industry would like to let people believe that they are dealing with only one hotel, that is not the case. We purposely did not want to parade in people for a dog and pony show, but to bring in a solid group of representatives to expose a growing practice across the state. **Ms. Case** stated she believed the bill will accomplish the goals. Notification will probably not go as far. By saying the service charge remains hotel revenue, there is still no disclaimer in place to state the cash will be used for tips. Clarification is needed. If a service charge is charged, the management needs to give the money to the employees. After receiving the customer's letters, the intent was known. If the employer charges an additional 18%, the money needs to go to the employees. If service charges are going to be eliminated and the employees are going to be kept at the hourly wage, the employees are no worse off than they were when the process began. The union has no intention of stopping the industry from raising prices as much as they want. **CHAIRMAN KEATING** asked how do you respond to the comment, "the breakfast banquet waitresses will receive smaller gratuity than the evening banquet waitresses. **Ms. Case** stated they would respond by saying we really appreciate the folks at the top of the industry taking it on themselves to make wages fair by reducing tip income. In fact, it is commonly accepted by those at the bottom that the seemingly higher wage for banquet servers is part of the compensation for both the short hours, the irregularity of the work, and the various other factors that make banquet work both unstable and difficult. It is incredibly hard to budget families and be a banquet waitress/waiter.

Closing by Sponsor:

REPRESENTATIVE JAY STOVALL stated he is a very conservative businessman, but, he does not believe the legislation is a labor issue. One of his constituents, who worked for the Holiday Inn Hotel for years, had to accept the change of policy. The effects were negative. The constituent had been and continued to be a good waitress/waiter. The Holiday Inn provided good service. Management decided to change the policy, and did so. If the business wanted to lower the wages, why not lower the wages. The

end result was the same. The employer took away the tips and raised the wages, but the take home pay was substantially less. Years of loyal service did not make a difference. Most people believe the service charge, gratuity and tip are synonymous, and the money goes to the employee. If the money does not go to the employee, then that is deception. If the hotel does not want the workers to get the money, the hotel can raise the price of the meals; refuse to put on the service charge; and/or charge an hourly wage. **REPRESENTATIVE STOVALL** stated the bill is a matter of fairness and honesty. The bottom line is: If the employers pays workers fair wages, pay the workers honestly, not deceptively. **REPRESENTATIVE STOVALL** urged the committee to pass HB 272.

CHAIRMAN KEATING stated **Eddye McClure** distributed a Memorandum, a substitute bill, combining HB 66, HB 68, and HB 432. **Ms. McClure** asked the committee members to review the document for discussion at the next meeting. **Eddye McClure** stated she distributed the document to the Departments of Labor, Commerce, and Justice, with comments.

MONTANA SENATE
1995 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE _____

March 11, 1995

[illegible]

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wp.rollcall.man
CS-09

SUPPORT HOUSE BILL 272

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. #1

DATE March 11, 1995

BILL NO. HB 272

H.B. 272...THE FACTS

House Bill 272 is a simple bill providing a definition to the term "service charge". Service charges have recently been taken away from banquet employees yet the language in the banquet contracts remains the same.

This bill defines "service charge" as an arbitrary fixed charge added to the customers bill by an employer in lieu of a tip. It is collected by the employer and must be distributed either directly to the employee preparing or serving the food or beverage or pursuant to a tip pool agreement.

In 1993 prior to having their tips taken away the average banquet employee at the Holiday Inn made anywhere from \$9.73 per hour to \$17.00 per hour. Now the highest paid employee makes \$9.25 per hour, significantly less than before tips were taken away.

IF YOU WENT INTO A RESTAURANT AND LEFT A TIP ON THE TABLE
AND THE OWNER TOOK IT AND KEPT IT YOU WOULD BE MAD. THAT IS
WHAT IS HAPPENING AND THAT IS WHAT WE WANT TO STOP!

The language in the contract is deceptive, even the department of revenue assumed that employees received all service charges when they drafted the fiscal note. This language results in confusion among customers.
This is a fair business practice bill.

Mar 10, 95 17:00 No.018 P.O

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. # 91

DATE March 11, 1995

BILL NO. HB 272

March 10, 1995

Senate Message No. 444-4800

I Support H.R. 272

As a local businessman, I am often responsible for customer and employee banquets and meetings.

At a recent dinner banquet, the waitress overheard me comment that I felt a flat fee tip for service personnel is appropriate but an 18% "gratuity" applied to room fees and slide projector is not. The waitress told me that the 18% "gratuity" didn't even go to the employees.

This is not right.



Joe Sarne

Testimony of Kathy Malyevac
H.B. 272, 3-11-95

SENATE LABOR & INDUSTRY

EXHIBIT NO. 2

DATE 3-11-95

BILL NO. HB 272

Mr. Chairman, members of the Committee,
for the record my name is Kathy Malyevac

I am President of the Montana State
Council of Hotel Employees and Restaurant
Employees

State wide we represent hundreds of
tipped employees including banquet tipped
employees at many of the major banquet
facilities in Montana including the
Northern in Billings, the Heritage Inn
in Great Falls, the Outlaw Inn in
Kalispell and the Copper King Inn & Fairmont
Resort in Butte.

In most cases tipped employees
earn minimum wage and rely on their
tips to live. There is a seasonal nature
to this work and is often part time with
few benefits.

Until this past year, tips, even when
called something else, like gratuity or
service charge, were passed along to the
employees. Within this past year, some of
the major banquet employers in Montana
began to retain the gratuity or service
charge. This resulted in a dramatic loss
of income for the employees and was
deceptive to the customer, who generally
thinks a gratuity or service charge goes

directly to the employees

We have no problem with employers setting a fair price for their goods & service. They have full leeway to set a price per plate, per event, or per meal.

What we have found is when employees negotiate how tips are divided among themselves in an establishment, they make fair decisions.

I have provided copies of the tip pool agreements negotiated into Union Contracts with some of Montana's largest and most significant hospitality industry employers. What you will notice in all cases these tips are received by the employees providing the services. H.B. 272 provides that protection for all banquet employees we encourage you to pass H.B. 272.

LABOR AGREEMENT

Between

HOTEL EMPLOYEES & RESTAURANT EMPLOYEES LOCAL 457

and

BUTANA CORPORATION dba COPPER KING INN
(CULINARY DIVISION)

Term: JUNE 15, 1993 to JUNE 14, 1995

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XI	VACATIONS	9
XII	CALL OUT	11
XIII	BUSINESS AGENT	11
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	SECTION 2: Luncheonette and Delicatessen Work	14

(G) Tips paid on a bill by the host of a banquet or formal party shall be divided by the Employer among the personnel involved in the direct preparation or services provided for each party or banquet, on the basis of thirty-five (35%) percent to all kitchen personnel directly involved in the preparation or service, and sixty-five (65%) percent to the remainder of the involved personnel.

(H) All regular employees who have been on the payroll for one (1) year or more shall be entitled to three (3) unpaid personal days per year. A request for an unpaid personal day shall be made at least seven (7) days in advance. It shall not be granted for holidays or special events unless the Employer so stipulates. Granting the request is subject to the sole discretion of the Employer. Denial of a request shall not be subject to the grievance or arbitration provisions of this agreement.

ARTICLE XVIII

CONTRACT MINIMUMS

No present employee shall suffer a reduction in hourly or daily rate of pay or a loss of any fringe benefits presently enjoyed due to the signing or operation of this Agreement. Nothing herein shall be construed to prevent the payment of wages in excess of the minimum wage scale as set forth in Article V and Appendix "A," it being understood that the Employer may place superior wages, hours, working conditions and other employee benefits in effect and may reduce the same to the minimums herein prescribed without the consent of the Union.

ARTICLE XIX

NO STRIKE - NO LOCKOUT

(A) The Union agrees that it will not authorize, encourage, engage or participate in any strikes, slowdowns, work stoppages or picketing, nor will the Employer engage in any lockout of employees during the life of this Agreement, or any renewal hereof; it being understood, however, that if the provisions of Article XXIX (Term of Agreement) of this Agreement are complied with by either party and the parties are unable to agree on the terms of any renewal, then and only in that event, the Union shall have the right to engage in a lawful strike or the Employer may engage in any lawful action.

(B) In the event of the violation of the provisions of this section, the Union will promptly order its members to return to work and if the Union does so, the Employer will not hold the Union

EXHIBIT 3
DATE 3-11-95
1 HB 272

LABOR AGREEMENT
BETWEEN
RADISSON NORTHERN HOTEL
AND
HOTEL, MOTEL AND RESTAURANT EMPLOYEES
AND
BARTENDERS UNION LOCAL #56

March 3, 1994 to April 30, 1995

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ARTICLE IX

SICK LEAVE

Section 1. Sick leave hours are based upon straight time hours worked or paid up to six (6) days per year with the right to accumulate a maximum of eighteen (18) days.

Section 2. Sick leave with full pay shall be allowed commencing the second day of an illness or first day of an accident or hospitalization.

Section 3. If the Employer requires a doctor's certificate, it will be requested by the Employer at the onset of illness or accident.

Section 4. Falsification of illness or injury shall be grounds for immediate discharge.

Section 5. An employee will be given one (1) week additional vacation every three (3) years if no sick leave is used during that period of time.

Section 6. For any employee with a medical leave of absence the Employer will make every effort to return the employee to his/her previous position contingent upon his/her ability to perform the assigned duties of the position.

ARTICLE X

WAGES

Section 1. The wages for the classifications of the Employer are attached as ADDENDUM "A" of this Agreement.

Section 2. No contracts or understanding shall be made between the Employer and his employees, either as individuals or groups, which would minimize the wages or working conditions in any form. This does not prevent the Employer from paying a superior craftsman a higher wage nor reducing such merit raises if the employee fails to retain the status as a more proficient employee.

Section 3. Gratuities are the property of the employee and shall be retained by the employee in addition to the established wage in this Agreement.

Section 4. On all pre-arranged banquet functions to which gratuities are added to the bill or are otherwise arranged for with management, the following division formula shall prevail:

A. On parties to which fifteen percent (15%) or more has HB 272 been added as gratuity; fifteen percent (15%) of this gratuity may be set aside for supervisors; eighty-five percent (85%) to the waitress and /or waiters (and others so designated by the customer) who served the function. If buspersons are used in the serving of the function, they shall receive ten percent (10%) of the waitresses and/or waiters share.

B. On parties to which less than fifteen percent (15%) has been added as gratuity, ten percent (10%) of this gratuity shall be set aside for supervisors; ninety percent (90%) to the waitresses and/or waiters (and others so designated by the customer) who served the function. If buspersons are used in the serving of the function, they shall receive ten percent (10%) of the waitresses and/or waiters share.

C. An accounting of the distribution of all gratuities for each and every function as outlined above shall be made not less often than once every week. The Employer shall maintain a record of this distribution and such records and information shall be available to Banquet Employees, and authorized Union representatives upon request.

ARTICLE XI

SAVINGS CLAUSE

If any word, paragraph or section of this Agreement is finally declared illegal, or in conflict with Federal Law, State Law, or rule established code, by other United States Supreme Court decisions, both parties hereto agree that such word, paragraph or section shall become inoperative at that time, and only then, to the extent to which it affects this Agreement. It is further agreed that in such event and if such illegality goes to the essence of this Agreement, both parties will meet as soon as practicable and negotiate toward a substitute clause.

ARTICLE XII

TERM OF AGREEMENT

This Agreement is effective March 3, 1994 and continues to April 30, 1995. If either party desires to extend or modify the terms of this Agreement, notice must be given to the other party a minimum of sixty (60) days prior to the expiration of the Agreement.

LABOR AGREEMENT

BETWEEN

THE BEST WESTERN HERITAGE INN

AND

THE HOTEL, MOTEL, RESTAURANT AND
TAVERN EMPLOYEES UNION,
LOCAL NO. 101

TERM: SEPTEMBER 16, 1994 TO SEPTEMBER 15, 1997

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SENATE LABOR & EMPLOYMENT
FAMILY NO. 4
DATE 3-11-95
BILL NO. HB 272

ARTICLE XVIII

BUSINESS AGENT

The Employer agrees that an authorized representative of the Union shall be permitted to make reasonable visits with members of the Union during business hours at their place of employment. The authorized representative of the Union shall also be permitted to interview employees concerning grievances and to ascertain whether or not the terms of the Agreement are being followed. The Union representative shall notify the General Manager or Assistant General Manager of their presence on the premises. The Union representative shall not interfere with the normal work of any employee.

ARTICLE XIX

MISCELLANEOUS PROVISIONS

(A) The Employer agrees to keep a copy of this Agreement posted at a place adjacent to the work area in each department of the employees covered by this Agreement.

(B) The Union House Card is, and shall remain the property of the Union, and shall be surrendered by the Employer on demand.

(C) Tips and gratuities are the property of the employee and form no part of their compensation, and are to be retained by them. Employees shall not be required to pool tips and gratuities received, with the exception of Banquet employees. Tips paid on a bill by a host of a banquet or other catering functions shall be divided by the Employer among the Banquet employees involved in each banquet or catering function according to the current formula used in the division of tips, a copy of which shall be provided to the Union.

(D) Contributions and collections for charitable purposes shall be handled on a voluntary basis and no deduction from wages shall be taken from the employee's pay.

(E) An employee shall not be charged for breakage so long as such breakage is not the result of extreme carelessness or maliciousness; or for overcharging or undercharging a customer or for a customer's walking out of the establishment without paying his or her bill, so long as the employee exercises reasonable care to prevent such incidents.

(F) Employees shall not be personally responsible for errors when cashing checks unless they violate specific written orders from the Employer regarding the procedures of cashing checks, guest charges and credit card procedures and foreign exchange.

(G) Each employee shall be permitted a ten (10) minute rest period during each four (4) hours worked. Rest periods shall be uninterrupted, except in case of emergency, and shall not be taken in conjunction with a lunch break unless mutually agreed to by the Employer and employee.

**FINAL GUARANTEE TO BE GIVEN
48 HOURS PRIOR TO FUNCTION**

CLIENT WILL BE BILLED FOR FINAL GUARANTEE IF A LESSER NUMBER OF PEOPLE
ATTEND.

WEEKEND FUNCTIONS MUST TURN FINAL GUARANTEE IN BY THURSDAY.
MONDAY AND TUESDAY FUNCTIONS IN BY FRIDAY

CANCELLATION POLICY

I have read the above contract and the Hotel's Catering Policies and Procedures printed on the reverse side and agree to the terms and conditions. This booking will remain tentative, subject to cancellation by the Hotel, until this contract is signed and received by the Hotel prior to the function.

HOTEL POLICIES (SEE REVERSE SIDE)

**AT THE HOTEL'S DISCRETION
WE RESERVE THE RIGHT TO REASSIGN
THE ABOVE ALLOCATED SPACE.**

SIGNATURE/TITLE _____

DATE _____

5500 Midland Road
Billings, MT 59101

PLEASE SIGN AND RETURN 1ST COPY

Phone: (406) 248-7701
FAX: (406) 248-8954

sales total over \$75.00 per bar. If the \$75.00 minimum is not met, there will be an additional \$30.00 fee per bartender.

11. Function guests will be admitted to the banquet room and expected to depart at the times stated in this catering contract, unless otherwise approved by the General Manager.
12. The Hotel may request that the customer obtain and pay for bonded security personnel when valuable merchandise or exhibits are displayed or held overnight in the Hotel.
13. The customer is responsible for the arrangements and all expenses of shipping materials, merchandise, exhibits, or any other items to and from the Hotel. The Hotel must be notified in advance of shipping arrangements to insure proper acceptance of these items upon arrival at the Hotel.
14. The Hotel is not responsible for damage to or loss of any items left in the Hotel prior to or following any function.
15. The Hotel reserves the right to move functions to other banquet/meeting rooms other than those appearing on the catering contract without prior notification.
16. The customer is responsible and shall reimburse the Hotel for any damage, loss, or liability incurred to the Hotel by any of the Customer's guests or any persons or organizations contracted by the customer to provide any services or goods before, during, and after the function.
17. Any items to be put on any meeting room or lobby walls, or any directional signs, must be approved by the Hotel.
18. The Hotel shall not be liable for non-performance of this contract when such non-performance is attributable to labor troubles, disputes or strikes, accidents, government (Federal, State and Municipal) regulations of, or restrictions upon travel or transportation, non-availability of food, beverage, or supplies, riots, national emergencies, acts of God and other causes whether enumerated herein or not, which are beyond the reasonable control of the Hotel, preventing or interfering with the Hotel's performance.
19. Any newspaper advertisements must be approved by the Hotel.

FILE # MISC**PLEASE SIGN AND RETURN**

John Q. Hammons Hotels, Inc.

HOLIDAY INN BILLINGS PLAZA

CATERING DEPARTMENT RESERVATION

DATE May 22, 1992DEF FAX: DAY Friday DATE July 23, 1992ORGANIZATION Midwest SoftwareIN CHARGE Julia PierceADDRESS P.O. Box 128, 102 E 1st St., Laurel, MT 59044PHONE: 528-7008METHOD OF PAYMENT PAYMENT UPON COMPLETIONHOME: **COCKTAILS**TIME PRICE NUMBER ROOM SPECIAL REMARKS HOSTED NO HOST **MEAL**TIME 12:00PMPRICE NUMBER 15-20ROOM Polina

MEALS LESS THAN 15 PEOPLE SUBJECT TO ROOM RENTAL CHARGE

SPECIAL REMARKS SET **MEETING**ARRIVAL TIME 8:00AMTO 5:00PMNUMBER 15-20ROOM YellowstoneSPECIAL REMARKS ROOM RENTAL/C W/Planned meal **COFFEE SET-UP**TIME AM

PM

Bar Requirements EXHIBIT 4DATE 3-11-95HB 272MENU Special Set-up Instructions and
Special Audio Visual Equipment Requested

CLASSROOM SET-UP

U-shape setup

EXHIBIT 4
DATE 3-11-95
HB 272

BANQUET

Folio #17098

CHARGE
TO
COMPANY Midwest Software

BY Julia Pierce

STREET (LUNCH)

CITY

DATE	SERVER	ROOM NO	
3/25/95	<i>MB</i>	Poolside	45184
1			
2			
3	Chik Parm @ \$8.25		132.00
4			
5			
6	17% SERVICE CHARGE		22.44
7			
8			
9			
10	TOTAL		154.44
11	PAYMENT ON COMPLETION		
12			
13			
14			
15			

REV 4 90

March 1, 1995

Senator Keating
Montana Legislature
Capitol Station
Helena, MT 59624

Dear Senator Keating,

As tipped employees, we are writing you to support H.B. 272, the Tip Protection Act, which will come before you in the Senate Labor and Employment Relations Committee soon.

This is a good bill which makes it clear to the foodservice customer which part of their bill is for the actual cost of the meal and service and which part is the tip for the foodserver.

Thank you for your support of this bill.

Sincerely,

William Johnson
1417 Tony Ave
Billings, Mont 59101

Don Dorsdall
1430 Lynn "D"
Billings, MT 59102
(406) 259-8026

Lewis Lux
11 King Arthur
Billings, MT 59105

Kathy Zarzosa
702 So 31st
Billings, MT 59101

Beace Sawoman
2808 3rd Ave South
Billings, Mt. 59101

Nora J. Malm
3610 Janema
Beq. Mt. 59101

Joe Belonger
640 No 15 #8
Billings Montana 59101

Ron Cleveland

Richard May
1813 Natalie St.
Billings, MT 59105

Margie Zedek
STEVE KOSAKOWSKI
Sharon White
302 36th St W
Blgo.

Joy K Weeks
1115 1/2 N 25th
Blgo 59101

Joey Spaw
1248 Ponderosa
Blgo. MT 5902

JAMES PERSON
361 PROSPECTORS
BIDINGS, MT
59105

John P. [unclear]
777 1/2 11th St N D.
Blgo MT 59107

Susan Suetich
536 Cook
- Blgo MT 59102

Jason Basil
608 Broadway Ave.

James Wright
2535 Rockwood St.

Kelly Souders
BX 28
Dumkey 59129

Laura Jensen
414 KATHY LN
Blgo, MT 59108

Joey LaValley
628 Birch Ln
Billings MT 5910

Sherry Holckelberg
246 1st Street
Wordev MT. 5908

Martha Dukart
25 Goldust Dr.
Billings, Mont. 59107

Anne Barnes
PO Box 50397
Billings, MT 59108

Friendship House of Christian Service

Curtis B. Haney, Director

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. # 6

DATE March 11, 1995

BILL NO. HB 272

March 6, 1995

The Honorable Thomas Keating
Chairman, Labor & Industry Committee
Montana State Legislature
Helena, Montana

Dear Mr. Keating and Committee Members,

Reference is made to legislation concerning consumer information and fairness, which my experience testifies to.

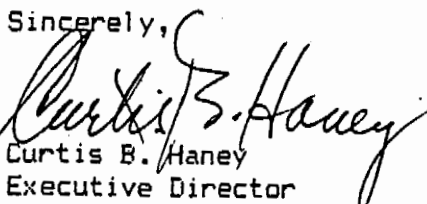
In March, 1994, the Billings Plaza Holiday Inn refrained from telling us that a service charge included in our contract for a hotel entertainment event did not directly compensate Holiday Inn staff as a customary gratuity.

Upon inquiring about the Holiday Inn policy, we learned that no banquet "tips" were included in the contracted percentage charged, and staff was deprived of tips unless banquet customers were wise to the policy.

We stand in opposition to such a policy and think it unconscionable business practice to withhold such information from the customer.

We support any and all legislation that attempts to tighten fairness to both the consumer and the worker in Montana. This is especially necessary in a state and city that is on the upswing in the tourism trade.

Sincerely,


Curtis B. Haney
Executive Director

A Center for Caring and Sharing

3123 8th Avenue South - Billings, Montana 59101 - (406) 259-5569

March 2, 1995

Senator Thomas Keating
Helena, Montana

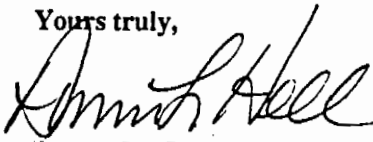
Dear Senator Keating:

It is my understanding that you and your fellow lawmakers have an opportunity to correct an injustice being perpetrated upon a group of Montana workers as the result of a deceit by certain business owners.

It should not be lawful for a restaurant or other service oriented business to itemize a charge as be for "service" or as a "gratuity" unless it goes to those providing the service. It is my understanding that in some cases, this charge is not being passed on to the service personnel for whom it was intended and this is wrong. In these cases the "tip" is going toward profits, a pure act of deceit upon customers who believe that they are providing, as Webster says, "a gift of money for a service.

I urge to correct this wrong by supporting with your vote legislation which would prevent such actions.

Yours truly,



Dennis L. Hall



Robyn Butler-Hall

1841 Arcadia Dr.
Billings, MT 59102

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. # 8DATE 3-11-95BILL NO. HB-272**TO: Senator Tom Keating****FR: Denise Gorham**

*Representing the Class of 1974 Reunion Committee for
Billings Senior High, Billings West High and Billings Central High*

On July 29, 1994, our high school class reunions held an all school gathering at the Holiday Inn Trade Center. Our bill for the evening totaled approximately \$6000. We were very disappointed to learn that a 17% service charge (almost \$1000) which was added to our bill was not a tip for the waitresses, bartenders and those who worked the hardest to provide good service but simply a profit given back to the company. If we had clearly understood this procedure when we signed the contract, we would have specified that the 17% service charge be given to the employees as a tip.

We all feel we were mislead and are thoroughly disgusted in the Holiday Inn's poor management of their employees tips.

We are totally in support of any and all legislation that will insure the welfare of and protect the tips of employees in the restaurant business.

Denise Gorham
2036 Bitterroot Drive
Billings, MT 59105
(406) 248-2625



August 4, 1994

Anthony Ulmar
Holiday Inn
5500 Midland Rd.
Billings, MT 59101

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. #9

DATE 3-11-95

BILL NO. HB 272

Dear Anthony:

A 20 year class reunion only comes once in a lifetime. And, when planning an event for 500 or more people, there is a lot of time and energy expended into making it a success. The bigger the crowd, the more time needed to plan the event and the bigger expectations become.

We all represent the planning committee for the Billings Senior, Billings West, Billings Central High Schools Class of '74. We live in Billings and you'll find us just as active and involved in coordinating other community events. We were thrilled with the idea of having an all-school event on Saturday. Due to the recommendations of past committees, we chose to have the event at the Holiday Inn. At this point in time, none of us will ever recommend that another class have their all-school gathering at the Holiday Inn, unless you can guarantee the items listed below will be resolved.

We feel the following issues need to be resolved:

1. **Recommend a buffet dinner.** The amount of food was not adequate for the price we paid. We had a positive experience working with catering. They were very accommodating to our needs and expectations, however, there was an obvious communication breakdown between catering and the food / bar service. Our count for the evening was 530 people, however, when we realized the food was dwindling, we paid for an additional \$400 in food. *We paid an average of \$9.09 per person for food that would barely suffice for a toddler.* What a disappointment for everyone. We were embarrassed by the amount of food we received for \$9.09 per person. There were questions as to whether we actually received everything we ordered!!!
2. **You need at least 3 bars set up for the event.** We were told there would be 3 bars setup for the event, however, only 2 bars were set up. People waited in line over 20 minutes to purchase a beer that cost them \$2.25 per bottle! Some people were so fed up that they left and went to other establishments to purchase beverages. What a shame!
3. **The staff was not adequate to facilitate all our needs.** We commend the employees who did their very best to accommodate us, however, it was not adequate for a crowd our size. They worked hard to cover-up the shortage of employees. They didn't look bad...the company looked bad.
4. **Lastly, the 17% service charge.** Yes, we did sign a contract agreeing to pay the fee, however, we were all disgusted to discover that it all went back to the company and none of the people who worked the hardest would ever be rewarded with tips. Your bartenders, waitresses and cooks are the most valuable resources you have. Without them, you have nothing but an empty building. Treat them well, treat them fairly. They know what needs to be changed..listen to them. Never lose sight that someday, one of them could be your boss.

We relied on the expertise of the catering staff and the helpfulness of the employees to make our expectations come true. Unfortunately, we feel it was beyond their control to fulfill our expectations. It was very obvious to us that corporate cutbacks and reductions caused the dissatisfaction we feel today.

Our goal is to speak as loud as we can for change. We try to support local businesses and will recommend good experiences to others. On the flip side, we will let others know if there have been bad experiences. We are all very disappointed in management's lack of professionalism for this event. The Holiday Inn has lost credibility in the community and it is partially due to the items listed above. Once again, it is our request that all of the issues be resolved.

Billings Senior High, Billings West High, Billings Central High School
Class of '74 Reunion Committee

January 29, 1995

SENATE LABOR & EMPLOYMENT

FORM NO. # 10

DATE March 11, 1995

BILL NO. HB272

Dear Sirs,

My wedding was held at the Holiday Inn on September 3, 1994.

When I paid the catering department, I was under the impression that the 17 percent was for the serving staff. I asked to even make sure, and the lady who handled the account told me that it would go to all of the servers. They did a great job, and ~~they~~ deserved a tip. But never received one. My opinion as a server, is that any and all tips should go to the servers who work very hard for a decent wage.

Sincerely,

Jody Penner
Gordon Penner

P.S. If you would like to ask us any questions, please feel free to call me at 406-655-9764.

11
March 11, 1995
HB 272

HOUSEBILL 272

SENATE COMMITTEE TESTIMONY

I. Introduction:

Lonnie Funk

Position: Regional Vice President for John Q. Hammons Hotels, Inc.

Former Position: General Manager of the Holiday Inn Billings

Montana Born & Raised In Billings

Resident of Billings through 1989

Past President of Montana Innkeepers Association

II. Understanding of Intent of Housebill 272:

1. Requires the employer to include service charge as part of the employee wage.

III. Current Holiday Inn Banquet Employee Compensation System:

1. In our system for compensation of banquet employees, we currently pay the service employees a flat hourly wage of between \$7.00 and \$9.50 an hour, depending upon their length of service and job responsibility. In our system, no tipping or gratuities paid to our employees by the guests are required ~~on the bill~~. The service charge paid by the customer to the hotel is considered hotel revenue.

Average at \$8.00

IV. Position:

1. The Holiday Inn Billings and John Q. Hammons Hotels is opposed to Housebill 272 because it would mandate that service charge we believe to be hotel revenue be paid to service employees as part of their wages.

V. History:

1. In July 1993, 35 of the 37 John Q. Hammons Hotels converted to the flat wage

compensation system for banquet servers, banquet setup, banquet management, kitchen management, catering management and food & beverage directors. The two hotels that are exceptions were excluded due to preexisting union contracts.

a. Prior to changing to this format:

- We researched how other major hotel companies were compensating their banquet employees. *4 month process*
- Including in that list would be Holiday Inn, Sheraton, Red Lions, Marriott, Raddison and Ramada.

100% utilizing flat wage

b. We completed a comprehensive wage survey in all 37 hotel markets for all the positions that were formerly included in the tip distribution system.

c. We chose the flat wage compensation format for the following reasons:

- This system was the most commonly accepted system for compensating banquet and management employees.
- It allowed us to easily track and consistently pay competitive wages
- We could guarantee to our employees the wage they were going to be paid, whether they were working a breakfast, lunch dinner coffee break or reception.

Note: To date there have been no other legislative challenges to this compensation system as this is becoming a very common practice in most states.

VI. History of Transition in Billings:

1. In July 1993 we raised the hourly wage for banquet servers from the minimum wage of \$4.25 plus a portion of the gratuity to a wage of \$6.75 to \$9.25 an hour depending upon the length of service and job responsibility.

In the restaurant employees get 100% of the tips

*DETERMINED by
MINIMUM wage
+ AVERAGE hourly tip
GRATUITY
TOTAL # of hours*

→ HOW WAGE WAS DETERMINED

** 8
ANNUAL*

2. The wages for those job classifications were increased by ~~25¢ per hour~~ on Jan 7, 1995. We currently pay \$7.00 to \$9.50 an hour. HB 272

Note: There are three full-time servers, three part-time servers and one supervisor currently employed who had worked in the former distribution system of a staff of a current staff of 26.

WE HAVE HAD NO PROBLEM RECRUITING APPLICATIONS FOR SERVERS @ A STARTING PAY OF \$7.00 HOUR

3. In 1993 some employees utilized their right to try and organize a collective bargaining unit. The banquet wage system was one of their key issues.

The union was voted down 99 to 17.

4. In 1994 and the early part of 1995 some employees again utilized their rights to try and organize a collective bargaining unit. The banquet wages were again one of their issues.

The union was voted down 91 to 47.

5. It is apparent that this minority of upset employees is now attempting to get the state legislature to enact a law that they believe will mandate that they should receive our service charge revenue.

VII. The Holiday Inn Billings and John O. Hammons Hotels is Opposed to this Legislation for the Following Reasons:

1. It will require the employer to include service charge as part of the employee wage. As a result:
 - a. We would be required to pay higher than local competitive wages.
 - b. We would be forced to raise our prices, which could make us uncompetitive in the local market which ~~would~~ ^{could} reduce our revenues.
 - c. We could be forced to layoff employees or substantial reduce hours of employees in this or other departments to help offset the wage cost increase.
2. We are already paying the highest hourly wage in the market.

3. The owner of a business should have the right to decide whether tipping or gratuities are required.
4. We believe a majority of the employees feel that the flat hourly wage system is fair because the employees now know what hourly wage they are going to make per hour whether they are working a breakfast, lunch, dinner, coffeebreak or reception.
5. In establishments where banquet business is a large portion of the overall operation, it is no longer practical to utilize service charge distribution as the form of compensation, because it creates a huge discrepancy in wages for similar work from department to department by taking away portions of hotel revenue necessary to pay other employees. *EQUAL PAY FOR EQUAL WORK. \$12.00 + plus ROOM VS 5.00 FOR CLOS*
6. We believe that a service charge required from the customer to be paid to the hotel is hotel revenue. We have the legal right to do whatever we wish with our revenue, just as every other business has. Businesses in many other industries, such as banks, repair shops, clothing stores and private clubs, require that their customers pay service charges, but do not allow tipping. There is no reason to single out the hotel industry and confiscate their revenue. *ESPECIALLY IN LIGHT OF FACT THE FLAT WAGE SYSTEM IS THE MOST FAIR SYSTEM FOR ALL EMPLOYEES INVOLVED.*

VIII. Conclusion:

1. The State Government should be involved in how we pay our employees to the extent that they require minimum wages and other conditions, which are uniform to all employees. Where State Government attempts to provide special benefits to certain classes of employees, state laws unfairly penalize those classifications whose wages must necessarily be reduced to pay for the additional benefits mandated by state law.
2. No other State in the Union has this type of legislation. It was attempted in California and was abandoned because it proved to be unworkable. *JOHN HAMMONS HOTELS ALONG WITH WINEGARTH AND HAMMONS HOTELS DOES BUSINESS IN 38 STATES. THEY HAVE BEEN NO CHALLENGE TO THIS COMPENSATION SYSTEM IN ANY OTHER STATE.*

*We respectfully request that this committee oppose
HB 272*



John Q Hammons
HOTELS

EXHIBIT

11

DATE

3-11-95

1

HB 272

Via Fax**March 1, 1995**

**Senator Tom Keating
Capital Station
Helena, Montana 59620**

Dear Senator Keating,

I am writing to you about HB 272, which I understand has been forwarded to your Labor and Employment Committee. I am the Regional Vice President of John Q. Hammons Hotels and I oversee the Holiday Inn in Billings.

Our organization is **opposed** to this legislation for the following reasons:

- 1) The intent of the bill is to require the employer to include service charge as part of the employees' wage.
- 2) In our system for compensation of banquet employees, we currently pay the service employees a flat hourly wage of between \$7.00 and \$9.50 an hour, depending upon their length of service and job responsibility. In our system, no tipping or gratuities paid to our employees by the guests are required or allowed.

This banquet compensation system is currently utilized by the Holiday Inn and other service establishments in Montana. This is the common system for compensating banquet employees in most other states.

- 3) The rationale for this system is straight forward - -
 - a. The owner of a business should have the right to decide whether tipping or gratuities are required.
 - b. Where flat hourly wage systems, such as ours are utilized, the employee knows what they are going to make per hour, whether they are working a breakfast, lunch, dinner, coffee break or reception.

REGIONAL OFFICES

7640 NW TIFFANY SPRINGS PARKWAY
KANSAS CITY, MISSOURI 64153

Senator Tom Keating

March 1, 1995

Page 2

- c. In establishments where banquet business is a large portion of the overall operation, it is no longer practical to utilize service charge distribution as the form of compensation, because it creates a huge discrepancy in wages for similar work from department to department by taking away portions of hotel revenue necessary to pay other employees.
 - d. This flat wage is determined by taking a competitive wage survey. The Holiday Inn is already paying the highest wages for banquet employees in Billings.
- 4) We believe that a service charge required from the customer to be paid to the hotel is hotel revenue. We have the legal right to do whatever we wish with our revenue, just as every other business has. Businesses in many other industries, such as banks, repair shops, clothing stores and private clubs, require that their customers pay service charges, but do not allow tipping. There is no reason to single out the hotel industry and confiscate their revenue.
- 5) The State Government should be involved in how we pay our employees to the extent that they require minimum wages and other conditions, which are uniform to all employees. Where State Government attempts to provide special benefits to certain classes of employees, state laws unfairly penalize those classifications whose wages must necessarily be reduced to pay for the additional benefits mandated by state law.
- 6) No other State in the Union has this type of legislation. It was attempted in California and was abandoned because it proved to be unworkable. The State of Delaware does require notification to the guest that the service charge is not paid to the employees to avoid any implication that the guest might be misled. We would not be opposed to wording that would require this type of notification, but we do not agree that the proposed changes in the law are warranted.

Senator Keating, I would like to discuss this issue with you over the phone. Also, I would appreciate your recommendation about how to communicate my feelings with your committee. Please give me a call at work at 816/891-7788 or at home at 816/587-7521 at your earliest convenience.

Sincerely,

JOHN Q. HAMMONS HOTELS, INC.


Lonnie Funk

*

DATE 3-11-95SENATE COMMITTEE ON HB 272

BILLS BEING HEARD TODAY: _____

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
<i>Blaine Jensen</i>	Proponent - Self	272	✓	
<i>Guy D. Chilson, Jr.</i>	Self	272	✓	
<i>Kenia Sullivan</i>	Self	272	✓	
<i>Lynette Russell</i>	Self	272	✓	
<i>Jon Doh</i>	Self	272	✓	
<i>Kathy Malysue</i>	MT State Council ^{of NRE}	272	✓	
<i>Mary Hall</i>	Self	272	✓	
<i>Doy Judge</i>	MT STATE AFL-CIO	HB272	✓	
<i>Kelly Sordano</i>	Holiday Inn Employee	HB272	✓	
<i>Jeri Titus</i>	Self	HB272	✓	
<i>Melissa Case</i>	Hotel Employers + Rest. Employers	HB272	✓	
<i>Secky Fascione</i>	HOTEL + REST. UNION	HB 272	✓	
<i>Tom Hopgood</i>	Holiday Inn - 13/55	HB272		✓
<i>Lennie Funk</i>	Holiday Inn Bkgs	HB272		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE March 11, 1995
SENATE COMMITTEE ON Labor & Employment Relations
BILLS BEING HEARD TODAY: HB 272

BILLS BEING HEARD TODAY:

 $\angle \blacksquare \angle$ [illegible]

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on March 14, 1995, at
3:00 P.M.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. Gary C. Aklestad, Vice Chairman (R)
Sen. Steve Benedict (R)
Sen. Larry L. Baer (R)
Sen. James H. "Jim" Burnett (R)
Sen. C.A. Casey Emerson (R)
Sen. Sue Bartlett (D)
Sen. Fred R. Van Valkenburg (D)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Council
Mary Florence Erving, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: None.

Executive Action: HB 66, HB 68, HB 432, HB 414, HB 264,
HB 272, SB 354

{Tape: One; Side: One}

EXECUTIVE ACTION ON HB 66, HB 68, and HB 432

Discussion:

CHAIRMAN KEATING stated the bill combines HB 66, HB 68, and HB 432. The representative bill number is coordinating the set of bills, and the bills are put into a Gray Bill. **Ms. McClure** stated there is a change in the set of amendments. The amendments were given to the Department of Commerce, Justice and Labor on Friday, and to the committee members on Saturday (**EXHIBIT 1**). **REPRESENTATIVE HERRON** and the Labor Department submitted amendments, which were included in the new amendments (**EXHIBIT 2**). Two sections of the codes were in two of the bills. One was based on **SENATOR BARTLETT'S** concerns, and the language **SENATOR**

decisions, if the District Court upheld the decision. By approving this bill, the legislature is substantially changing the collective bargaining premise. That is: "It is all right, if you don't like a decision on an unfair Labor dispute, you can come to the legislature and request an exception. It is all right for there to be a unilateral change in working conditions, when the condition is mandatory, subject to bargaining." It is an extremely poor precedent for the legislature to be setting.

SENATOR BARTLETT stated she faults the people who brought the bill and had the bill drafted as an amendment to the unfair Labor practice section of the collective bargaining statutes. The change, they wanted to make, was not made in the proper place.

Vote:

The BE CONCURRED in motion for HB 414 PASSED by Roll Call Vote, with SENATORS BARTLETT, VAN VALKENBURG, and WILSON voting NO. SENATOR BENEDICT will carry the bill on the floor.

SENATOR BENEDICT asked CHAIRMAN KEATING if there will be other bills heard in the Labor and Employment Relations Committee. CHAIRMAN KEATING explained that he has been asked by the contractor's association and another group. They want a committee bill to clean-up the contractor's licenses. The bill is coordinated with SENATOR FORRESTER's bill. IF SENATOR FORRESTER's bill goes through, then the bill will not be needed. The bill would clean up public contractor's licensing. and the bill would stand alone. No money has been appropriated. There is a licensing stipulation, but it does not do anything. There is a fee of 1% of the proceeds that goes into the general fund. That part would be kept, but it would not be called a license fee, anymore. It would be a tax. If the hearing is necessary, the committee would draft a committee bill. The group has been asked to wait until HB 272 has been heard and acted on.

EXECUTIVE ACTION ON HB 272

Motion:

SENATOR BARTLETT moved HB 272 BE CONCURRED IN.

Discussion:

SENATOR BENEDICT stated he has amendments to pass to committee members (EXHIBIT 3). Although he was not at the Saturday committee hearing, he discussed the bill with proponents and opponents to find out what was the largest objection to the current practice. Apparently, the largest objection was the deceptiveness of the term, service charge. The service charge does not go to the employees. The amendment basically addresses the service charge, which is not distributed to the employees. SENATOR AKLESTAD asked if the term, "service charge" would be struck in the contracts. SENATOR BENEDICT stated the service

charge would have to be explained. The customers have to be told that the service charge is an administrative service charge. The service charge does not automatically go to the employees, as tips. Many restaurants pay the employees the monies the businesses receive for service charges, and the employees also receive the tips and gratuities. Businesses will have to explain the service charge is not distributed to employees, if the business retains the service charge for other fees or costs accrued by management. **SENATOR WILSON** asked **SENATOR BENEDICT** to explain how the businesses will explain the new law to the customers, and how the employer will conspicuously notify the customer.

{Tape: One; Side: Two}

SENATOR BENEDICT stated the customer would be given a bill and/or a charge slip. The service charge information will be printed on the document, perhaps at the bottom of the document. The explanation will notify the customer about the service charge. It is not a tip and it is not distributed to the employees. A written/printed narrative would clearly describe the policy. **SENATOR WILSON** expressed concern about the billing process. The discussion could be held with an entirely different group of people than the group of people sponsoring the banquet. Consequently, the individual people, the guests, etc, who attend the banquet would not be informed. **SENATOR BENEDICT** said that is not the point. Whoever pays the bill will know that the service charge is not distributed to the employee.

CHAIRMAN KEATING stated he received a copy of the DELAWARE statutes, which deals with the service charge (**EXHIBIT 4**). The Delaware legislation reads, "A service charge is an obligatory sum of money included in the statement of charges. Clear and conspicuously notice must be made on either the menu, the placard, the front of the statement of charges or other notice given to the customer indicating that all or part of the service charge is the property of the management. ... such notice must be clearly printed, stamped, or written in bold type. A service charge assessed to customers, patrons, or guests without such notice, is the property of the primary direct service employee. For the purpose of this section, type, which is at least 18 points, or a quarter of an inch on the placard, an eighth of an inch or larger on all other notices shall be considered clear and conspicuous." Delaware law says that the bill, menu or the contract must state, conspicuously, the service charge goes to the management. If it does not, and there is a service charge written on the document, it is a tip. The notice must be in large print.

SENATOR BENEDICT offered to explained further the rational of the amendment. **SENATOR BENEDICT** stated he still believes the tip pool, the wage, or any other kind of enumeration for services should be left between the employer and the employee. In cases where the employer and employee have a collective bargaining

agreement, the tip pool, wage, or other enumeration can be part of the bargaining tool. **SENATOR BENEDICT** stated he does not think the legislature should dictate what the employer should pay the employee. The amendment takes care of the claims that the provider is not being up front or honest concerning where the services charges are going.

SENATOR WILSON stated there are not very many collective bargaining agreements in the industry. Therefore, it is difficult to be fair in the bargaining process. The bulk of affected employees are nonunion. **SENATOR WILSON** stated he would appreciate it if the proposed legislation would include specific language to let people, who are attending the banquet, know the business's policy on service charge. House Bill 272 is too broad.

SENATOR BENEDICT stated he thinks the amendment covers the issue and does so, conspicuously. **SENATOR BAER** stated he was surprised there was an amendment. This is not the amendment that he anticipated. From the looks of the amendment, it changes the entire character of the bill. **SENATOR BAER** stated he would like to hear from the proponents of the bill. **Melissa Case** stated she received the amendment right before the hearing started. The scope of the bill has been changed dramatically. Many proponents worked exceptionally hard to develop an encompassing solution. House Bill 272, as it was written, correctly addressed the issue. The opponents distributed another set of amendments, and impaired the character of the bill even more so. **Ms. Case** stated she encouraged the committee to take a close look at the original bill. The bill does what the proponents want the bill to do. **Ms. Case** stated she would encourage the committee members to question the Department of Labor, since the amendment may be more difficult to enforce than the original bill. The proponents reject the submitted amendments.

Ms. McClure asked **SENATOR BENEDICT** about amendments 5 and 6. The amendments will take out the "service charge" language in two places (section 304-34-01). Sections 3 and 4 can be deleted. On page 4, line 6, the language defines tips and gratuities (34-02K). Service charges are covered in 34-01. Other changes clean up technical errors. If the language is removed, the sections can be deleted.

SENATOR BENEDICT asked about amendment number 5, section 7 of the amendment. **Ms. McClure** answered amendments, numbered 5 and 6, are alright. Number 7 deals with the applicable date. Numbers 5 and 6 talk about the tax treatment, which would work with part two of the bill. The sections would be treated the same. Part of the title needs to be deleted. The tax law provision would be taken out of the title, and the sections would be struck from the bill. **SENATOR BENEDICT** asked to make a conceptual amendment.

SENATOR WILSON re-requested the specific language. He wanted the service charge language used and displayed in a conspicuous manner. **Ms. McClure** stated **SENATOR WILSON's** request would be accomplished similar to the Delaware Statutes. **SENATOR WILSON**

asked **SENATOR BENEDICT** if he would agree to the Delaware statutes. **SENATOR BENEDICT** said no, but the amendments could be offered later.

SENATOR AKLESTAD asked if the words "service charge" would be struck from each place they appear in the proposed bill. **Ms. McClure** stated the words do not appear in all sections of the bill. For example, section one deals with the Labor law. **SENATOR AKLESTAD** asked about page one, line 27. Would the words "service charge" stay in this section of the bill. **Ms. McClure** stated the "service charge" notation would be struck. **SENATOR BENEDICT** needs to define and insert a reference as to how "service charge" will be used in the bill. **SENATOR BENEDICT** is not going to define service charge under federal law. He is going to define service charge by state law. Page two, line 26 describes the Labor statute. The service charge language in section 34 will be deleted because the term "service charge" is later described in the Labor law section.

Sections 4 and 5 have tax code language that needs to be struck. Rather than striking the language, the sections could be taken out. This is a committee decision.

The last amendment deals with effective dates, the dates the contract is entered into. **SENATOR AKLESTAD** asked for a clarification on **SENATOR WILSON's** concern. The concern is about the banquet people, who are paying the tab. They may not know about the "service charge", since they had nothing to do with signing the original banquet contract. Somehow, the service charge policy should be conspicuous. The policy concerning the service charge money, which goes to management, not to the server, needs to be displayed or somehow communicated to the public, so they can decide if they will leave a tip. **SENATOR AKLESTAD** asked about the customers buying individual meals. If there is a service charge, how will the customers be notified. Will there be a notice on the wall? **CHAIRMAN KEATING** explained the amendments are weak. The posted wall notification might be acceptable, if the banquet area was the only area affected by HB 272. That is not the case when a restaurant has both a separate eating area and a separate banquet area. The posting notification method would also work under the following circumstance. The "management keeps the service charge" decision is a policy, and the employees receive an hourly wage, so the customers know the servers are not getting tips. In this case, the notification placard would be appropriate. The customers would know the facts, and if the people want to leave a tip, they can. The amendment does not destroy the tip issue.

CHAIRMAN KEATING stated the Delaware language would include private clubs. **CHAIRMAN KEATING** stated the Montana Club, Helena, has a fixed price on the menu, and, in addition, a service charge is added. This money, supposedly, goes to the waiters. However, the law says the management can not have anything to do with tip pools. Management can not require a tipping pool. **CHAIRMAN**

KEATING explained if the Delaware language was law, every business would have to conspicuously give notice to the public. The business would have to display/communicate the service charge policy. If the business did not display the policy, the service charge becomes a gratuity, in whole, and is distributed to the servers. **SENATOR BENEDICT** stated if **CHAIRMAN KEATING** wants the language in the bill, **SENATOR BENEDICT** would allow the language. **CHAIRMAN KEATING** stated he likes the Delaware language better than the "soft" language in the **BENEDICT** amendment. There are definite ramifications. The banquet waitresses/waiters are bringing this amendment before the committee. Because of management changes in policy, they lost part of their income. They were receiving the full service charge before, and they were averaging about \$12.00 per hour. Now, the average salary is approximately \$8.00 or \$9.00. Management decided other people had to be considered.

In the absence of an employee tip pool, management distributed the service charge in a different way. All the waitresses/waiters were treated the same, whether they worked breakfast, lunch, or dinner. The service charge amounts were different because of the percentage calculations of the prices of the meals. A dinner meal costs more than a breakfast meal. There was disparity between the amounts of tips for breakfast, lunch and dinner meals. The banquet waitresses/waiters, whether they worked in the morning or in the evening, were paid the same amount. The setup people, the busboys, the dishwashers, and the other people who helped serve the meal did not realize any of the service charge money until management decided to equalize pay for everybody.

House Bill 272 deals with banquets servers and does not deal with the larger number of waitresses/waiters who get tips on the tables. The exception may be rare occasions when management sets up a special breakfast and adds a service charge. **CHAIRMAN KEATING** stated he does not want to destroy tipping, but if the original bill passed, management will charge the full price for a meal and will not have a service charge. Management will pay the banquet waitresses/waiters whatever they want for wages. There will not be a gratuity. Nor will management have to conspicuously advertise that gratuity is not part of the service charge. The public will not know to leave a tip. If the bill uses language that requires notification, there are no sanctions against management. The only management ramification for failure to notify, is the service charge becomes a gratuity and is the property of the server. **SENATOR BENEDICT** stated he would like to see the amendment pass. **SENATOR BILL WILSON** is correct, the Delaware language is needed.

CHAIRMAN KEATING stated if a committee member entertained the idea of rewriting the amendment, he would postpone executive action until the language was drafted correctly. **SENATOR BENEDICT** withdrew his amendment.

CHAIRMAN KEATING explained the reason the amendment would be re-written would be to change the service charge definition; put teeth into notification, and allow management to run their business the way they want. If the business do not want to fool with notification, the service charge becomes a gratuity and the banquet waitresses get what they want.

SENATOR BAER stated he understood one of the major problems is the bill's reference to employees preparing and servicing the food and beverage. Other people work banquets, not just the waitresses/waiter. Bus people, people in the kitchen, and people who set up and take down the tables and chairs are among the other workers. **SENATOR BAER** expressed concern about these people. House Bill 272 does not address the entire problem. **SENATOR BAER** stated he had additional concerns about changing the character of the bill, which, in turn, effects the title's meaning. **CHAIRMAN KEATING** explained the language is "An act clarifying certain Labor laws to include a service charge received by employees. **SENATOR BAER** replied the bill clarifies the waitress/waiters will receive the service charge. Now they are not going to receive the service charge. They will have no say in the matter if the company decides they are going to raise their pay in lieu of tipping. **CHAIRMAN KEATING** stated the proposed Delaware language says they "may" receive the service charge, if management does nothing.

SENATOR BENEDICT stated it was time to go to plan 2. **SENATOR WILSON** stated he would rather see the committee vote either yes or no on the **BENEDICT** amendment. The only thing about the Delaware amendment is that it would make a bad amendment better. He would rather see the committee deal with the **BENEDICT** amendment, as it was introduced. **SENATOR BENEDICT** stated he has already withdrawn the amendment and would like to move another amendment.

Motion:

SENATOR BENEDICT MOVED TO AMEND HB 272 (Amendment set 2) (EXHIBIT 5).

Discussion:

The second set of amendments for HB 272 would confine the legislative remedy to the problem actually described by the proponent witnesses. The amendments deal with the banquet setting. If the service charge is distributed by the restaurant to the banquet employees, the distribution must be equal among all banquet employees. They would include preparers, dishwashers, utility people, servers, set up persons, captains, supervisors and all other banquet personnel. The amendment is more of a fair and equitable distribution of the service charge.

SENATOR AKLESTAD asked how is the terminology "service charge" defined, and is the service charge automatically a tip to those

people described. **SENATOR BENEDICT** stated if the restaurant decided not to distribute the service charge to the employees, it would be required to disclose the fact to the banquet customers. If management decided to distribute the service charge among the employees, management has to distribute the charge equally with the food preparers, dish washers, utility people, servers, setup persons, captains, supervisors, and all other banquet personnel. **SENATOR AKLESTAD** asked how notification would be handled. **SENATOR BENEDICT** stated the same way, as the first set of amendments describe.

CHAIRMAN KEATING stated "we are splitting the baby again". **CHAIRMAN KEATING** stated he is not in favor of dictating to anybody how to run their business. We are government, because we have already written Labor laws language into statute. Now, the Legislature is being asked to settle a dispute. In order to settle that dispute, both sides are saying be specific, and designate who is going to get what. In one instance the service charge, which is at a rate that amounts to a normal tip or gratuity in the open restaurant. It is called a service charge and the banquet waitresses want the whole 15-16% for carrying the food from the kitchen and serving the food to the customers. This is what the waitresses want in their bill. Management says the service charge ought to be offset and pay some of the other help as well. **CHAIRMAN KEATING** stated he does not want to dictate as to who gets what piece of the service charge. Management has a point in that they should be able to pay the people for the services. After all, all of the services, including the waitress and the setup, etc. is to the benefit of the patron to make certain that they get a nice setting, a nice dinner, etc. If the legislature start being specific, the legislature in then directing somebody's business. He stated if there was to be any amendment to the bill it should contain general provisions rather than specific provisions. The language should force management and Labor to get together and work things out. **SENATOR BENEDICT** stated he likes the first set of amendments better and would have been more than willing to work with people on the language in the first set, but the amendments looked as though they would go no place. That is why the second set of amendments were proposed. **SENATOR BURNETT** stated management should not mention gratuity, if they want to raise the price of the meal, raise the price. Then Labor and management can handle the problem afterwards. The legislature should not be dictating the business.

SENATOR VAN VALKENBURG stated under either set of amendments there is no enforcement mechanism whatsoever. What happens if the committee passes the bill without amendments? Yes, the restaurants can and in many cases will simply add what has been the service charge in to the cost of the meal. Life will go on in that fashion, but the restaurant and hotel workers have said they understand and accept that possibility. That is the simplest most straightforward way to deal with the problem. Just pass the bill without amendments.

CHAIRMAN KEATING stated the reason why he likes the Delaware Code is that it has a built in penalty. It is an either/or situation. Either you notify the public, and the service charge is managed, the way management wants to. If management does not want to fool with the service charge, then the money goes to the waitress. It has a built in penalty, and it requires conspicuous notice.

SENATOR BENEDICT said he would withdraw the amendments and offer a different motion, but if the motion does not succeed, the amendment will be offered for the second time.

Motion: **SENATOR BENEDICT** WITHDREW HIS MOTION TO ADOPT THE AMENDMENTS AND OFFERED A SUBSTITUTE MOTION TO POSTPONE ACTION ON THE BILL.

Discussion: **SENATOR WILSON** stated he does not think anybody's mind will be changed. The parties that brought the bill forth are not going to be happy with the bill, and probably do not want the bill unless it is the same way the bill came from the House.

SENATOR BENEDICT stated he would oppose the motion. **CHAIRMAN KEATING** stated an amendment would change his mind. **SENATOR BARTLETT** stated if in this particular instance, what was wrong with how things used to be done. Management gave no clear testimony or rationale for why the change was made. House Bill 272 simply put "things" back to where they were before management decisions and changes. The public understood before management made decisions. **SENATOR BENEDICT** explained one of the reasons why management is not comfortable with the bill is because the tip pool is now just being spread between the servers and not between everybody else in the business. **SENATOR BARTLETT** stated that decision was supposed to be an employee decision, not the management's decision under current law. Whether the bill passes or not, the law remains. **CHAIRMAN KEATING** explained the tip pool is amongst the employees. Management has been claiming the service charge as management income for their purposes. Management has been using part to offset administrative costs, part to cost of doing business, part to increase salaries and pay other people involved in the banquet services. It is a whole can of worms that could be discussed until dooms day. **SENATOR BARTLETT** asked what is wrong with the way things used to be done. **CHAIRMAN KEATING** answered because things are changing. Management is having a hard time dealing with the service charge, as a whole gratuity to the banquet waitresses/waiters. Payroll taxes, Work Comp premiums and the cost of doing business, as well as competition. Management has to be competitive or they are out of business, unless they get a casino game into the establishment. **CHAIRMAN KEATING** stated the motion is to postpone debate while the committee contemplates an amendment or no amendments.

Vote: THE MOTION TO POSTPONE ACTION CARRIED WITH SENATORS BARTLETT AND WILSON voted NO.

ROLL CALL

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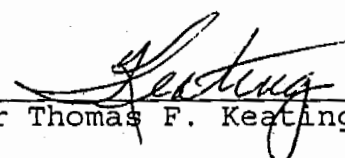
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SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 17, 1995

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration HB 272 (third reading copy -- blue), respectfully report that HB 272 be amended as follows and as so amended be concurred in.

Signed: 
Senator Thomas F. Keating, Chair

That such amendments read:

1. Title, line 7.

Following: "INDUSTRY;"

Insert: "REQUIRING AN EMPLOYER TO PROVIDE PROPER NOTICE TO A CUSTOMER REGARDING WHO RECEIVES SERVICE CHARGE;"

2. Title, line 8.

Strike: "IMMEDIATE EFFECTIVE"

Insert: "APPLICABILITY"

3. Page 2, lines 1 through 3.

Following: "bill" on line 1

Strike: remainder of line 1 through "agreement" on line 3

Insert: "and collected by the employer in lieu of a tip. If the employer keeps all or a portion of the service charge, the employer shall give the customer notice. The notice must be clearly and conspicuously stated on the banquet menu and final bill. A written agreement between the customer and the employer must indicate that all or a portion of the service charge is treated as the property of management instead of as a tip or gratuity. For purposes of this section, type that is at least 10-point type or larger on all notices is considered clear and conspicuous. If notice is not provided, the service charge is the property of the nonmanagement employees involved in providing banquet services or must be distributed pursuant to a tip pool agreement."

4. Page 3, lines 1 through 3

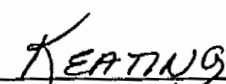
Following: "bill" on line 1.

Strike: remainder of line 1 through "agreement" on line 3

Insert: "and collected by the employer in lieu of a tip. If the employer keeps all or a portion of the service charge, the employer shall give the customer notice. The notice must be clearly and conspicuously stated on the banquet menu and final bill. A written agreement between the customer and the employer must indicate that all or a portion of the service

 Amd. Coord.

Sec. of Senate


Senator Carrying Bill

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charge is treated as the property of management instead of as a tip or gratuity. For purposes of this section, type that is at least 10-point type or larger on all notices is considered clear and conspicuous. If notice is not provided, the service charge is the property of the nonmanagement employees involved in providing banquet services or must be distributed pursuant to a tip pool agreement."

5. Page 7, line 16.

Following: "5."

Strike: "Effective date"

Insert: "Applicability"

Following: "act]"

Strike: remainder of line 16

Insert: "applies to contracts entered into on or after the [effective date of this act]."

-END-

AMENDMENT
HB 272
SET NO. 1

1. Page 1, line 27.
Following: "3402(k)"
Strike: "AND SERVICE CHARGES THAT ARE COVERED BY SECTION 3401"
2. Page 1.
Strike: Line 30 through line 3, page 2.
Insert: "(b) If an employer adds a service charge to the customer's bill in lieu of a tip or gratuity and does not distribute the service charge to the employee preparing or serving the food or beverage either directly or pursuant to a tip pool agreement, the employer shall disclose to the customer in a conspicuous manner that the service charge is not distributed to the employee."
3. Page 2, line 26.
Following: "3402(k)"
Strike: "OR SERVICE CHARGES THAT ARE COVERED BY SECTION 3401"
4. Page 2
Strike: Line 30 through line 3, page 2.
Insert: "(c) If an employer adds a service charge to the customer's bill in lieu of a tip or gratuity and does not distribute the service charge to the employee preparing or serving the food or beverage either directly or pursuant to a tip pool agreement, the employer shall disclose to the customer in a conspicuous manner that the service charge is not distributed to the employee."
5. Page 4, line 6.
Following: "3402(k)"
Strike: "OR SERVICE CHARGES THAT ARE COVERED BY SECTION 3401"
6. Page 7, line 7.
Following: "3402(k)"
Strike: "OR SERVICE CHARGES THAT ARE COVERED BY SECTION 3401"
7. Page 7, line 16.
Following: "Section 5"
Strike: Remainder of line 16.
Insert: "Applicability. This act shall apply to banquet contracts entered into after the effective date of this act."

Citation
DE ST TI 19 s 902
19 Del.C. s 902

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R 1 OF 1 P 1 OF 4 DE-ST TERM

DELAWARE CODE ANNOTATED
TITLE 19. LABOR
PART I General Provisions
CHAPTER 9. MINIMUM WAGE

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Current through Second Sess. of the 137 Del. Gen. Assembly (1994) Ch. 469

s 902 Minimum wage rate.

(a) Every employer shall pay wages at the rate of not less than \$3.35 per hour to every employee in any occupation, except as may be otherwise provided under this chapter, until such time as the minimum wage is set by the United States government at an amount in excess of \$3.35 per hour. Upon the establishment of a federal minimum wage in excess of \$3.35, the minimum wage in this State shall be equal in amount to the federal minimum wage, except as may otherwise be provided under this chapter.

(b) Gratuities received by employees engaged in occupations in which gratuities customarily constitute part of the remuneration may be considered wages for purposes of this chapter in an amount equal to the tip credit percentage, as set by the federal government, of the minimum rate as set forth in subsection (a) of this section. In no event shall the minimum rate, under this subsection, be less than \$2.23 per hour.

(c) For purposes of this section:

(1) An employee engaged in an occupation in which gratuities customarily constitute part of the remuneration shall be any worker engaged in an occupation in which workers customarily and regularly receive more than \$30 per month in tips or gratuities.

(2) "Gratuities" means monetary contributions received directly or indirectly by an employee from a guest, patron or customer for services rendered where the customer is entirely free to determine whether to make any payment at all and, if so, the amount.

(3) A "primary direct service employee" is one who in a given situation performs the main direct service for a customer and is to be considered the recipient of the gratuity.

(4) A "SERVICE CHARGE" is an obligatory sum of money included in the statement of charges. Clear and conspicuous notice must be made on either the menu, placard, the front of the statement of charges or other notice given to the customer indicating that all or part of the SERVICE CHARGE is the property of the management. Such notice must be clearly printed, stamped or written in bold type. A SERVICE CHARGE assessed to customers, patrons or guests without such notice is the property of the primary direct service EMPLOYEE(S). For the purposes of this section, type which is at least 18 point (one-fourth inch) on the placard, or 10 point (one-eighth inch) or larger on all other notices shall be considered clear and conspicuous.

(d)(1) Any gratuity received by an employee, indicated on any receipt as a gratuity, or deposited in or about a place of business for direct services rendered by an employee is the sole property of the primary direct service employee and may not be taken or retained by the employer except as

required by state or federal law.

(2) Employees may establish a system for the sharing or pooling of gratuities among direct service employees, provided that the employer shall not in any fashion require or coerce employees to agree upon such a system. Where more than 1 direct service employee provides personal service to the same customer from whom gratuities are received, the employer may require that such employees establish a tip pooling or sharing system not to exceed 15% of the primary direct service employee's gratuities. The employer shall not, under any circumstances, receive any portion of the gratuities received by the employees.

(3) The Department may require the employer to pay restitution if the employer diverts any gratuities of its employees in the amount of the gratuities diverted. If the records maintained by the employer do not provide sufficient information to determine the exact amount of gratuities diverted, the Department may make a determination of gratuities diverted based on available evidence.

(19 Del. C. 1953, s 902; 55 Del. Laws, c. 18, s 1; 56 Del. Laws, c. 134, s 1; 56 Del. Laws, c. 339; 57 Del. Laws, c. 691; 59 Del. Laws, c. 470, s 1; 64 Del. Laws, c. 84, s 1; 65 Del. Laws, c. 436, s 1; 66 Del. Laws, c. 28, s 1; 67 Del. Laws, c. 141, ss 1, 3, 4.)

19 Del.C. s 902

DE ST TI 19 s 902

END OF DOCUMENT

AMENDMENT
HB 272
SET NO. 2

1. Page 2, line 1.
Following: "to"
Strike: "the"
Insert: "a banquet"
Following: "tip"
Strike: ". It is collected by the employer and must be"
Insert: "or gratuity if the service charge is"
Following: "distributed"
Insert: "equally among the following banquet employees"
2. Page 2, line 2.
Following: "directly"
Strike: "to the employee preparing or serving the food or beverage"
3. Page 3, line 3.
Following: "agreement"
Strike: "._"
Insert: "::
Insert:
 - "(i) Banquet food preparers;
 - (ii) Banquet dishwashers;
 - (iii) Banquet utility persons;
 - (iv) Banquet servers;
 - (v) Banquet set up persons;
 - (vi) Banquet captains;
 - (vii) Banquet supervisors; and
 - (viii) All other banquet personnel."Insert: "(c) If an employer adds a service charge to a banquet customer's bill in lieu of a tip or gratuity and does not distribute the service charge to the employees as set forth in subsection (b), the employer shall disclose to the banquet customer in a conspicuous manner that the service charge is not distributed to the employees."
4. Page 3, line 1.
Following: "to"
Strike: "the"
Insert: "a banquet"
Following: "tip"
Strike: ". It is collected by the employer and must be"
Insert: "or gratuity if the service charge is"
Following: "distributed"
Insert: "equally among the following banquet employees"

5. Page 3, line 2.
Following: "directly"
Strike: "to the employee preparing or serving the food or beverage"
6. Page 3, line 3.
Following: "agreement"
Strike: "_."
Insert: ": "
Insert:
 "(i) Banquet food preparers;
 (ii) Banquet dishwashers;
 (iii) Banquet utility persons;
 (iv) Banquet servers;
 (v) Banquet set up persons;
 (vi) Banquet captains;
 (vii) Banquet supervisors; and
 (viii) All other banquet personnel."
Insert: "(c) If an employer adds a service charge to a banquet customer's bill in lieu of a tip or gratuity and does not distribute the service charge to the employees as set forth in subsection (b), the employer shall disclose to the banquet customer in a conspicuous manner that the service charge is not distributed to the employees."
7. Page 7, line 16.
Following: "Section 5."
Strike: Remainder of line 16.
Insert: "Applicability. This act shall apply to banquet contracts entered into after the effective date of this act."

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MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By SENATOR TOM KEATING, on March 16, 1995, at
at 3:00 p.m.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. Gary C. Aklestad, Vice Chairman (R)
Sen. Steve Benedict (R)
Sen. Larry L. Baer (R)
Sen. James H. "Jim" Burnett (R)
Sen. C.A. Casey Emerson (R)
Sen. Sue Bartlett (D)
Sen. Fred R. Van Valkenburg (D)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddy McClure, Legislative Council
Mary Florence Erving, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: None.
Executive Action: HB 272

EXECUTIVE ACTION ON HB 272

Discussion:

CHAIRMAN TOM KEATING stated he received a letter from the Billings Petroleum Club, explaining the club had a 15 % service charge added automatically to every dinner and banquet meal. The 15% service charge is divided between the help and no money is retained by management. **CHAIRMAN KEATING** stated he does not have information concerning the Montana Club, Helena, MT.

SENATOR EMERSON asked about the testimony of Ms. Sullivan, one of the ladies who testified March 11, 1995. She had worked at the Billings Petroleum Club, but had not received any tips or gratuity. **CHAIRMAN KEATING** explained Ms. Sullivan received tips, according to the testimony, but only received 5% of the total

15%. The tip income had been reduced to 5%, or one third of the total 15%. The suspicion was that management was keeping the other 10%. Certainly, Representative Mill was upset. **CHAIRMAN KEATING** stated he did not request the letter from the Petroleum Club, but the Petroleum Club's management was quick to reply that they were not retaining money for administrative purposes. All monies went to the employees. The club divided the total amount between the bus people, the cooks, and the other staff. The letter did not specify whether or not supervisors were included.

SENATOR BENEDICT asked **CHAIRMAN KEATING** if he would give the committee an update about what work was accomplished at the meeting. **CHAIRMAN KEATING** stated **Stuart Doggett, Melissa Case, John Andrews, Eddy McClure, and Representative Stovall** met in **CHAIRMAN KEATING's** office. The scope of the discussion dealt with notification concerns, and the Delaware legislation was discussed. **John Andrews, Department of Labor**, stated he requested a Department of Labor staff person to research the Delaware Law (**EXHIBIT 1**). The staff person contacted state employees in Delaware and inquired how the law was working, what have the employers and employees thought about of the law. The response was the law has been on the books for approximately 4 or 5 years, and there have been no real problems. In part, the problemless situation occurred because Delaware is such a small state. The population was informed about the law almost immediately. Employers were concerned about the cost of posting notices. Employers and employees thought the law has been workable. The state of Delaware did not adopt administrative rules to deal with the legislation because the law was clearly written. No rules were necessary, and the legislation has functioned with only one problem. The particular claim was handled by a telephone call.

CHAIRMAN KEATING asked the people attending the meeting to produce a workable amendment. The sponsor suggested that a compromise amendment would be wise, although no compromise was actually reached at the meeting. Nonetheless, the Restaurant Association submitted an amendment. The amendment embraces the theme of the Delaware language. The Department of Labor made other contributions, as well (**EXHIBIT 2**).

Motion:

SENATOR STEVE BENEDICT moved to adopt the Keating amendments to HB 272.

Discussion:

SENATOR EMERSON asked if the Keating amendment was in sync with the Delaware legislation. **CHAIRMAN KEATING** stated the amendment is similar to one section of the Delaware law. That section requires the customer be notified in print, large enough to be conspicuous. If management does not want to fool with the service charge, they can put the service charge on. If they do

not notify the customers, then the service charge goes to the servers, no one else. When management wants the service charge and wants to declare how the service charge is being distributed, or that part of the service charge is going to the management, the management will have to declare. However, if the customer knows that it is not a tip or gratuity, management can distribute the 15% in whatever manner they wish. **SENATOR AKLESTAD** asked if the service charge went directly to the server. Would it be possible to make sure some of the tip went to other workers. **SENATOR AKLESTAD** stated he did not want the legislature to become involved in managing restaurants, but, he wanted to correct the problem that just the servers get the tips and the other banquet people get nothing. **SENATOR BENEDICT** explained, as he interpreted the amendment, the term "preparing" is not just about the cook, but could be everyone who works the banquet. **John Andrews** questioned the interpretation. In a banquet setting, depending how the banquet was set up, buffet style or otherwise, the cook could be in the buffet line helping the guests select the entrees. Would they meet the criteria of being a server? Arguably, they would meet the criteria. There are the people who haul the food back and forth from the kitchen. These people would meet the criteria. **Mr. Andrews** said he does not know how to come up with "everything" to include every category of employee, management and non-management. If there is a tip pool agreement in place, those people who would normally be involved in the tip pool agreement, would share in the distribution.

Ms.. McClure asked **Mr. Andrews** about the word, "prepare". Does the word mean the person preparing the food or can it mean the set up people, as well. **Mr. Andrew** explained there is a real possibility, if when the state enforces the law, the state would ask the business if they had some sort of current agreement in place. The state would ask who are the people who would normally be involved in the distribution of the tip pool/gratuity/service charge monies.

SENATOR BAER stated he has problems with the amendment language. He does not like the idea of excluding people who do a lot of the work at the banquets, like setting up, taking down and cleaning up afterwards. If there is not a tip pool agreement, then there is a chance all the gratuities will go just to the people who prepare and serve the food. **SENATOR BAER** asked for the committee to insert "heading up" after the word "employees". If that is an acceptable jargon phrase. (No action was taken on the proposed phrase.) **Mr. Andrews** remarked if the legislation goes through, the department will have to enforce the law. Could it be possible for the department staff to discuss the dynamics of the proposed legislation in order to come to such a consensus. There are many categories of worker's classifications involved. For the businesses that do not have a tip pool arrangement, it may be possible for the department to discuss the dynamics of the proposed legislation. In doing so, the department could identify what categories would be involved. So if there was not a firm tip pool agreement, the administrative rule could identify the

categories and split the money evenly. The procedure could help avoid any kind of "fight over money". (No decision was made on Mr. Andrews suggestion) Concerning language on the first paragraph, third line from the bottom, **SENATOR AKLESTAD** asked if it was possible to use new language after the word "employees". Insert "distributed proportionately in a prearranged agreement by the employees or is distributed pursuant to a tip pool agreement." (No action was taken on **SENATOR AKLESTAD'S** question.)

SENATOR BENEDICT stated he was worried about the very low paid employees, such as dishwashers, bus people, etc. The idea of adding tip money proportionate to salaries is an alternative method. If a cook is making \$8.00 an hour and receives "x" amount of tip, and the dishwasher is making \$4.25 an hour. The cook could conceivably end up making \$10.00 an hour and the dishwasher will end up making approximately \$4.75 an hour. The language considered is "other employees, other than management, involved in the service or preparation". The new phrase would be, "if the notice is not provided and the employer keeps all or any portion of the service charge, and the undistributed portion of the service charge is the property of the employees preparing or serving the food or beverage or other employees, other than management involved in the service or preparation is distributed pursuant to a tip pool...". **CHAIRMAN KEATING** stated after the word "beverage", the words, "other non-management" are added. **SENATOR AKLESTAD** asked if there has to be a tip pool agreement in place before the language would be satisfactory. **CHAIRMAN KEATING** stated no, the words "or is distributed to a tip pool agreement" should clarify **SENATOR AKLESTAD'S** question. Mr. **Andrews** suggested rather than "equally distributed", perhaps "distributed proportionate to the employees regular rate of compensation". In other words, if a cook makes \$6.00 an hour, then they would share proportionately with someone who is making \$5.00 an hour.

SENATOR BAER offered an alternative solution. After the language "service charge is the property of the employees" insert "other than management", strike "preparing or serving the food or beverage or is". Then, leave "distributed pursuant to a tip pool agreement". The alternative solution would imply that a tip pool agreement would have to be in place. All employees would have a chance to get involved and decide the equitable distribution of the gratuity. The people who would make the decision would not be management. The solution would solve another problem, which is management taking the lion's share of gratuity.

SENATOR VAN VALKENBURG asked **Melissa Case** to speak about the extent the tip pool agreement exist in the industry and how the amendment effects the current tip pool agreements. What is involved in getting businesses to reach a tip pool agreement. Ms.. **Case** replied she understands most businesses have tip pool agreements in place. They may or may not be equitable or just, but the agreements do exist. There are couple of problems with the amendments created by the members that met in **CHAIRMAN**

KEATING's office. **Ms. Case** stated she would not address the conceptual amendment discussed in today's hearing. The problem is the employers who have already negotiated a successful tip pool agreement with management. If the business decided the business would keep 5% of the tip pool, the employees would suffer because they would not comply to the current arrangements. All the information would have to be disclosed. The amendment will effect the collective bargaining agreements, already in place, by forcing employers to disclose information. Up to disclosure, the employers of these businesses have been the "good" employers. It is only in the cases when the employers have taken all of the tip pool that the employees have felt violated. The problem is disclosure, rather than going back to the original system. There is no punishment for people who distributed the tip pool successfully in the past. The fact is that tip pool agreements are negotiated in collective bargaining agreements. Other employers have successfully negotiated tip pools, regardless of the fact that is supposedly illegal. Management cannot negotiate tip pools, but when they can do it successfully, it has worth and everyone benefits. The amendment would punish those people. There is also a severe problem about equal distribution. In a lot of restaurants, cooks are paid substantially more than other employees, especially the dishwashers. Therefore, if the tip would be allocated proportionately, there would be a huge disparity between the cook, the waitresses/waiters, and the dishwasher. **Ms. Case** stated it is not an intention to exclude dishwashers or anyone else. If **SENATOR BAER's** language can be broadened so that management is excluded. It would negate the problems of managers taking all. **Ms. Case** asked the committee to broaden the language and to use the original bill. She would accept **SENATOR BAER's** amendments.

CHAIRMAN KEATING stated, on page 2, line 2, the amendment language is similar to language offered in the original bill, regarding the funds being distributed, either directly to the employee preparing the food or beverage or pursuant to a tip pool agreement. So, if the bill passes, as is, the either or situation would still apply. **CHAIRMAN KEATING** stated he does not see anything wrong with the either/or situation, as long as the law doesn't try to distribute the percentage of distribution. If just "the service charge is the property of the non-management employees preparing or serving the food or beverage, or is distributed pursuant to a tip pool agreement" language is used, it is up to the personnel to divide the money. **SENATOR BENEDICT** asked who makes the decisions. **CHAIRMAN KEATING** replied the help makes the decisions; it is their money. **SENATOR BENEDICT** asked who are the senior members amongst the employees? They are probably the servers, and they are the ones who will decide who is going to keep the money. They will decide for themselves.

SENATOR BURNETT stated he received a different message from the people offering testimony. The problem is the 15% surcharge. It is a truth-in-advertising problem. If management does not say

the amount is a service charge, the price is the price of the meal. Then if management raises the wages, the employees do not get a tip. Management is going to have to do something or they will not have any servers or any employees. **CHAIRMAN KEATING** replied management may be forced to go to a flat price, without the service charge because the banquet business is so competitive. If one restaurant adds a service charge and says the meal is only a certain amount, plus a service charge, the same problem exists. The individual who tries to avoid the tip distribution problem and tries to pay the help the "right" amount and so on, is at a disadvantage in the market place because the price appears higher than other business. **SENATOR BURNETT** stated it is management's decision, which should not be legislated.

CHAIRMAN KEATING acknowledged he is concerned about the statement "if notice is not provided and the employer keeps all or any portion of the service charge, any undistributed portion of the service charge is the property of the employees. The language would be clearer if it was written in this way: "If notice is not provided, the service charge is the property of the non-management personnel, or is distributed pursuant to a tip pool agreement." That puts the leverage on the management. Management will then have to go one way or the other. If management is going to do a service charge, then they have to notify the customer that the service charge is the property of the management. It may or may not be a gratuity. If management decides they want to pay a higher hourly wage for banquet help and keep the service, the decisions is up to management. It means payroll taxes are higher. Whereas, if they left the tip, the payroll taxes would be lower. Payroll tax is paid on part of the tip, not on the full amount. The decision is still management's. If management does not make the decision as how to deal with the service charge, they can still charge a service charge, rather than going to a totally high fee. They can still do the service charge, and let it go to the employees.

SENATOR BENEDICT stated he fears that if he was in the restaurant business and was forced by the legislature, after the employees came to the legislature for relief, he would probably stop the service charge completely and try to get by as cheap as he possibly could to bring his cost down. He would forget about any tip or anything else. If the bill goes through, the scenario described is what will happen in a lot of cases. The help will be at \$4.25 and they will get no tips, period, unless someone wants to leave a tip.

SENATOR KEATING stated if management made it conspicuous to all of the banquet people on the banquet menu or on the banquet bill/contract that the 15% charge is not a gratuity, the banquet people would leave cash. Cash on the table, under Montana law, belongs to the employee. **SENATOR BENEDICT** stated he fears management will not jump any hoops. Management will tell the employees there is no more 15% gratuity. Management does not want any gratuity. Management is not going to put anything on the

menu or anything. Management will say there is not going to be a service charge on the bill, and people who decided to leave a little gratuity, which most people do not do, will. That is fine. Management will just pay the help. No tips, except for what may be left on the table. **SENATOR VAN VALKENBURG** stated the service will end up being so bad under those circumstances that they will have about one banquet. Nobody will want to come back. **SENATOR BENEDICT** stated there are a lot of people looking for a job.

SENATOR SUE BARTLETT stated a menu is not distributed at most of the banquets she has attended. The menu selection has already been made. The member of the organization attending the banquet is not going to know what arrangements were made, especially if a required notice is not available. **SENATOR BARTLETT** stated she would like to see the notice posted in the banquet room, so people would know, or know to ask, whether their service charge was distributed to the employees. If the service charge was not distributed, the guest/customers would have the option to leave a personal tip. **CHAIRMAN KEATING** stated most of the banquets he attends have some sort of a handout, usually it is the agenda, which gives the menu, the food courses, etc. The exception is a breakfast meeting, which usually does not have an agenda. At formal banquets there is some sort of notice at each place setting. If notices were legislated, the banquet menu would be the logical place for notification.

SENATOR BARTLETT asked if the organization usually prepare the brochure or does the restaurant or hotel, etc. prepare the menu. **CHAIRMAN KEATING** stated sometimes the facility prepares the program on their printers. **SENATOR BARTLETT** stated she would have no objections if the information was printed in this manner, but that is not the norm, not is the previously described brochure commonly thought of as the banquet menu.

SENATOR AKLESTAD stated he has concerns over **CHAIRMAN KEATING's** language "if notice is not provided, the service charge is the property of the non-management employees preparing or serving the food or beverage or is distributed pursuant to the tip pool agreement." **SENATOR BENEDICT** asked if the committee wanted to use the following language, "involved in service", rather than "the employees preparing or serving the food..." **CHAIRMAN KEATING** agreed to change the language to "non-management employees involved in preparing or serving the food or beverage..." **SENATOR BAER** stated the language puts the legislation back to where the legislation started. **SENATOR BENEDICT** commented that **SENATOR BAER** was not satisfied with the language, as it did not involve the ancillary people. **CHAIRMAN KEATING** proposed another interpretation of the language, "if notice is not provided, the service charge is the property of the non-management employees involved in providing banquet services or is distributed pursuant to a tip pool agreement."

John Andrews asked Ms. McClure for an interpretation of the phrase, "...may be distributed pursuant...". Ms. McClure stated the language should be "...must be distributed pursuant...". If management does not have a tip pool agreement, you do it the other way. If the business has a tip pool, then it must be distributed by the tip pool arrangement. SENATOR BENEDICT stated "must" sounds like management must set up a tip pool. CHAIRMAN KEATING stated the language read ", or". SENATOR KEATING further explained. If there is a tip pool agreement, it must be distributed pursuant to the tip pool agreement. SENATOR KEATING stated the amendment is now amended and the wordage goes to both paragraphs.

SENATOR BARTLETT stated if it bothers some people to have the notification posted in the room, it should at least be conspicuous. SENATOR BARTLETT offered the following language, "stated on the banquet menu or program and the final bill." SENATOR VAN VALKENBURG stated the important thing is that the notice is going to be seen by people who are eating the meal, and not just by the people who are paying the banquet bill. The notice has to be written/printed on the banquet menu, the program, and the final bill. SENATOR BENEDICT argued that now people are being dragged in who have nothing to do with the banquet. For instance, the Chamber of Commerce prepare their own programs and have no idea what belongs in the law. CHAIRMAN KEATING said the Chamber is the entity who entered into the contract. They are the ones that should notify their membership about what is happening to the service charge. Customer notification is the essence of the bill. SENATOR BENEDICT stated it is customer notification by the employee, not by everyone else. SENATOR AKLESTAD asked, if this was the case, would newspaper notification two weeks before the function also be necessary. SENATOR BARTLETT asked SENATOR BENEDICT if he would accept having the notices posted in the banquet room. SENATOR BENEDICT stated a table motion would be his preference. CHAIRMAN KEATING stated if HB 272 is amended and passed, then the bill goes back to the House. If the House members want to add the notification in the Conference Committee, if they want to add the more conspicuous room notice, the amendment could be taken care of at that time. It is important to move along with the bill, if there is still life.

Motion:

SENATOR BARTLETT moved to amend the Keating amendment to HB 272, to add "or program" after the word "menu".

Motion:

SENATOR BENEDICT offered a substitute motion to TABLE HB 272. The motion failed with SENATOR BENEDICT voting YES.

CHAIRMAN KEATING stated the committee is back to the original motion to add "or program". SENATOR AKLESTAD stated he did not

like the motion. **CHAIRMAN KEATING** stated the substitute motion to TABLE HB 272 was tabled; therefore the original motion is following the word "menu", add the words "or program".

Vote:

The motion to AMEND HB 272 by adding "or program" FAILED. A roll call vote was taken. **SENATORS BAER, BENEDICT, BURNETT, EMERSON, AKLESTAD, AND KEATING** voting NO.

Motion:

CHAIRMAN KEATING stated the original motion is ready to be voted on. The motion is: amend HB 272 with the original Keating amendment with "non-mangagement" and "involved in" language included.

Motion/Vote:

SENATOR AKLESTAD MOVED HB 272 be concurred in as amended. The motion carried with **SENATORS BARTLETT, VAN VALKENBURG AND WILSON** voting NO.

CHAIRMAN KEATING introduced **Mr. Hunter, Department of Labor**. **Mr. Hunter** stated he prepared comments on HB 68 for floor debate. **Mr. Hunter** stated he had special instructions to use large print so **SENATOR EMERSON** could read the information with ease. The committee is to be assured, the print will accommodate the request.

SENATOR BARTLETT asked if there is further business concerning the public contractor's problem. **CHAIRMAN KEATING** stated the problem has been resolved. The contractors went down the hall to the House Taxation Committee, and their request was well received.

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DATE March 16, 1995

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Amendments to House Bill No. 272
Third Reading CopyRequested by Senator Keating
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure

March 16, 1995

1. Title, line 7.

Following: "INDUSTRY;"

Insert: "REQUIRING AN EMPLOYER TO PROVIDE PROPER NOTICE TO A
CUSTOMER REGARDING WHO RECEIVES SERVICE CHARGE;"

2. Title, line 8.

Strike: "IMMEDIATE EFFECTIVE"

Insert: "APPLICABILITY"

3. Page 2, lines 1 through 3.

Following: "bill" on line 1Strike: remainder of line 1 through "agreement" on line 3Insert: "and collected by the employer in lieu of a tip. If the
employer keeps all or a portion of the service charge, the
employer shall give the customer notice. The notice must be
clearly and conspicuously stated on the banquet menu and
final bill. A written agreement between the customer and
the employer must indicate that all or a portion of the
service charge is treated as the property of management
instead of as a tip or gratuity. For purposes of this
section, type that is at least 10-point type or larger on
all notices is considered clear and conspicuous. If notice
is not provided, the service charge is the property of the
nonmanagement employees involved in providing banquet
services or must be distributed pursuant to a tip pool
agreement."

4. Page 3, lines 1 through 3

Following: "bill" on line 1.Strike: remainder of line 1 through "agreement" on line 3Insert: "and collected by the employer in lieu of a tip. If the
employer keeps all or a portion of the service charge, the
employer shall give the customer notice. The notice must be
clearly and conspicuously stated on the banquet menu and
final bill. A written agreement between the customer and the
employer must indicate that all or a portion of the service
charge is treated as the property of management instead of
as a tip or gratuity. For purposes of this section, type
that is at least 10-point type or larger on all notices is
considered clear and conspicuous. If notice is not
provided, the service charge is the property of the
nonmanagement employees involved in providing banquet
services or must be distributed pursuant to a tip pool
agreement."

5. Page 7, line 16.

Following: "5."

Strike: "Effective date"

Insert: "Applicability"

Following: "act]"

Strike: remainder of line 16

Insert: "applies to contracts entered into on or after the
[effective date of this act]."

HOUSE BILL NO. 272

INTRODUCED BY STOVALL, HURDLE, MOLNAR, BOHLINGER, SOFT, SIMON, FORRESTER, MILLS,
STANG, GROSFIELD, ANDERSON

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING CERTAIN LABOR LAWS AND TAX LAWS TO
INCLUDE A SERVICE CHARGE RECEIVED BY EMPLOYEES OF THE FOOD, BEVERAGE, AND LODGING
INDUSTRY; AMENDING SECTIONS 15-30-111, 15-30-201, 39-3-201, AND 39-3-402, MCA; AND
PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-3-201, MCA, is amended to read:

"39-3-201. Definitions. The following are the definitions used for the purpose of this part:

(1) "Board" means the board of personnel appeals provided for in 2-15-1705.

(2) "Commissioner of labor" refers to the director, commissioner, or chief of the department of labor and industry, as the department is defined by law, or any person or persons designated by ~~him~~ the director, commissioner, or chief for the purpose of this part.

(3) "Department" means the department of labor and industry as provided for in 2-15-1701.

(4) "Employ" means to permit or suffer ~~OR SUFFER~~ to work.

(5) "Employee" includes any person who works for another for hire.

(6) "Employer" includes any individual, partnership, association, corporation, business trust, legal representative, or ~~any~~ organized group of persons acting directly or indirectly in the interest of an employer in relation to an employee but ~~shall~~ does not include the United States.

(7) (a) "Wages" includes any money due an employee from the employer or employers, whether to be paid by the hour, day, week, semimonthly, monthly, or yearly, and ~~shall include~~ includes bonus, piecework, and all tips, and AND gratuities of any kind, or service charges THAT ARE covered by section 3402(k) AND SERVICE CHARGES THAT ARE COVERED BY SECTION 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by employees for services rendered by them to patrons of premises OR BUSINESSES licensed to provide food, beverage, or lodging.

(b) For the purposes of this subsection (7), "service charge" means an arbitrary fixed charge added

1 to the customer's bill by an employer in lieu of a tip. It is collected by the employer and must be distributed
2 either directly to the NONMANAGEMENT employee preparing or serving the food or beverage or TO ANY
3 OTHER EMPLOYEE INVOLVED IN RELATED SERVICES, pursuant to a tip pool agreement."

4
5 **Section 2.** Section 39-3-402, MCA, is amended to read:

6 **"39-3-402. Definitions.** As used in this part, the following definitions apply:

7 (1) "Commissioner" means the commissioner of labor and industry.

8 (2) "Employ" means to ~~suffer or~~ SUFFER OR permit to work.

9 (3) "Employee" means an individual employed by an employer.

10 (4) "Farm or ranch" means any endeavor primarily engaged in cultivating the soil or in connection
11 with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing,
12 feeding, caring for, training, and management of livestock, bees, and poultry and fur-bearing animals and
13 wildlife.

14 (5) "Farm worker" means a person employed to do any service performed on a farm or ranch.

15 (6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of
16 industries or employment or class of employment in which employees are gainfully employed.

17 (7) (a) "Wage" means compensation due to an employee by reason of ~~his~~ employment, payable
18 in legal tender of the United States or check on banks convertible into cash on demand at full face value,
19 subject to an allowance as may be permitted by regulations of the commissioner under 39-3-403. The term
20 "wage" includes the reasonable cost to the employer of furnishing the employee with lodging or any other
21 facility if the lodging or other facility is customarily furnished by the employer to ~~his~~ employees; however,
22 the inclusion may not exceed an amount equal to 40% of the total wage paid by the employer to the
23 employee.

24 (b) The term "wage" does not include the cost to the employer of providing meals or a meal
25 allowance to the employee or the value of any tips, ~~OR gratuities, or service charges~~ THAT ARE covered
26 by section 3402(k) OR SERVICE CHARGES THAT ARE COVERED BY SECTION 3401 of the Internal
27 Revenue Code of 1954, as amended and applicable on January 1, 1983, received by employees for
28 services rendered by them to patrons of premises OR BUSINESSES licensed to provide food, beverage, or
29 lodging received by an employee as a gratuity for service.

30 (c) For the purposes of this subsection (7), "service charge" means an arbitrary fixed charge added

1 to the customer's bill by an employer in lieu of a tip. It is collected by the employer and must be distributed
2 either directly to the NONMANAGEMENT employee preparing or serving the food or beverage or TO ANY
3 OTHER EMPLOYEE INVOLVED IN RELATED SERVICES, pursuant to a tip pool agreement."
4

5 **Section 3.** Section 15-30-111, MCA, is amended to read:

6 **"15-30-111. Adjusted gross income.** (1) Adjusted gross income ~~shall be~~ is the taxpayer's federal
7 income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 ~~or as that~~
8 section may be labeled or amended and in addition ~~shall include~~ includes the following:

9 (a) interest received on obligations of another state or territory or county, municipality, district, or
10 other political subdivision ~~thereof~~;

11 (b) refunds received of federal income tax, to the extent the deduction of ~~such~~ the tax resulted in
12 a reduction of Montana income tax liability;

13 (c) that portion of a shareholder's income, under subchapter S. of Chapter 1 of the Internal
14 Revenue Code of 1954, that has been reduced by any federal taxes paid by the subchapter S. corporation
15 on the income; and

16 (d) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

17 (2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or
18 amended, adjusted gross income does not include the following which are exempt from taxation under this
19 chapter:

20 (a) all interest income from obligations of the United States government, the state of Montana,
21 county, municipality, district, or other political subdivision ~~thereof~~;

22 (b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including \$800
23 for a taxpayer filing a separate return and \$1,600 for each joint return;

24 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income
25 received as defined in 15-30-101;

26 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

27 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total
28 amount of the exclusion provided in (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess
29 of \$30,000 as shown on the taxpayer's return;

30 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity

1 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided
2 in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of
3 \$30,000 as shown on their joint return;

4 (d) all Montana income tax refunds or tax refund credits;

5 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

6 (f) all tips, ~~OR gratuities, or service charges~~ THAT ARE covered by section 3402(k) OR SERVICE
7 CHARGES THAT ARE COVERED BY SECTION 3401 of the Internal Revenue Code of 1954, as amended
8 and applicable on January 1, 1983, received by persons for services rendered by them to patrons of
9 premises licensed to provide food, beverage, or lodging;

10 (g) all benefits received under the workers' compensation laws;

11 (h) all health insurance premiums paid by an employer for an employee if attributed as income to
12 the employee under federal law; and

13 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against
14 a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange".

15 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l)
16 shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as
17 provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election
18 is effective.

19 (4) A taxpayer who, in determining federal adjusted gross income, has reduced his business
20 deductions by an amount for wages and salaries for which a federal tax credit was elected under section
21 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to
22 deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be
23 made in the year the wages and salaries were used to compute the credit. In the case of a partnership or
24 small business corporation, the deduction must be made to determine the amount of income or loss of the
25 partnership or small business corporation.

26 (5) Married taxpayers filing a joint federal return who ~~must~~ are required to include part of their
27 social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income
28 may split the federal base used in calculation of federal taxable social security benefits or federal taxable
29 tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base
30 must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

Section 4. Section 15-30-201, MCA, is amended to read:

"15-30-201. Definitions. When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) "Agricultural labor" includes all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision ~~thereof~~ of the United States or Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision ~~thereof~~ of the United States or Montana. The term "~~employee~~" also includes an officer of a corporation.

(3) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person; ~~except~~ that if the person for whom the individual performs or performed the service does not have control of the payment of the wages for the service, the term "~~employer~~" means the person having control of the payment of wages.

(4) "Wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for ~~his~~ the employer, including the cash value of all remuneration paid in any

1 medium other than cash, except that the term does not include remuneration paid:

2 (a) for active service as a member of the regular armed forces of the United States, as defined in
3 10 U.S.C. 101(33);

4 (b) for agricultural labor as defined in subsection (1);

5 (c) for domestic service in a private home, local college club, or local chapter of a college fraternity
6 or sorority;

7 (d) for casual labor not in the course of the employer's trade or business performed in any calendar
8 quarter by an employee unless the cash remuneration paid for the service is \$50 or more and the service
9 is performed by an individual who is regularly employed by the employer to perform the service. For
10 purposes of this subsection (4)(d), an individual is considered to be regularly employed by an employer
11 during a calendar quarter only if:

12 (i) on each of 24 days during a quarter the individual performs service not in the course of the
13 employer's trade or business for the employer for some portion of the day; and

14 (ii) the individual was regularly employed, ~~as determined under subsection (4)(d)(i)~~, by the
15 employer in the performance of service during the preceding calendar quarter;

16 (e) for services by a citizen or resident of the United States for a foreign government or an
17 international organization;

18 (f) for services performed by ~~a duty an~~ ordained, commissioned, or licensed minister of a church
19 in the exercise of ~~his~~ the minister's ministry or by a member of a religious order in the exercise of duties
20 required by the order;

21 (g) (i) for services performed by an individual under ~~the age of 18~~ years of age in the delivery or
22 distribution of newspapers or shopping news, not including delivery or distribution to any point for
23 subsequent delivery or distribution; or

24 (ii) for services performed by an individual in and at the time of the sale of newspapers or magazines
25 to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by
26 ~~him~~ the individual at a fixed price, ~~his~~ with compensation ~~being~~ based on the retention of the excess of the
27 price over the amount at which the newspapers or magazines are charged to ~~him~~ the individual, whether
28 or not ~~he~~ the individual is guaranteed a minimum amount of compensation for the service or is entitled to
29 be credited with the unsold newspapers or magazines turned back;

30 (h) for services not in the course of the employer's trade or business to the extent paid in any

1 medium other than cash when the payments are in the form of lodgings or meals and the services are
2 received by the employee at the request of and for the convenience of the employer;

3 (i) to or for an employee as a payment for or a contribution toward the cost of any group plan or
4 program ~~which~~ that benefits the employee, including but not limited to life insurance, hospitalization
5 insurance for the employee or dependents, and employees' club activities;

6 (j) for national guard and reserve training as provided in 5 U.S.C. 5517(d);

7 (k) as tips, OR gratuities, or service charges THAT ARE in accordance with section 3402(k) OR
8 SERVICE CHARGES THAT ARE COVERED BY SECTION 3401 of the Internal Revenue Code of 1954, as
9 amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons
10 of premises licensed to provide food, beverage, or lodging;

11 (l) by an employer for dependent care assistance actually provided to or on behalf of an employee
12 and for which a credit is allowed under 15-30-186 or 15-31-131, subject to the limitations provided in
13 section 129(b) of the Internal Revenue Code as it read on January 1, 1989. (Subsection (4)(k) terminates
14 on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

15
16 NEW SECTION. Section 5. Effective date -- APPLICABILITY. [This act] is effective on passage
17 and approval AND APPLIES TO CONTRACTS ENTERED INTO ON OR AFTER [THE EFFECTIVE DATE OF
18 THIS ACT].

19 -END-